When Doctors Experiment on Their Patients

The Washington Monthly

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Think Tanks As Flacks

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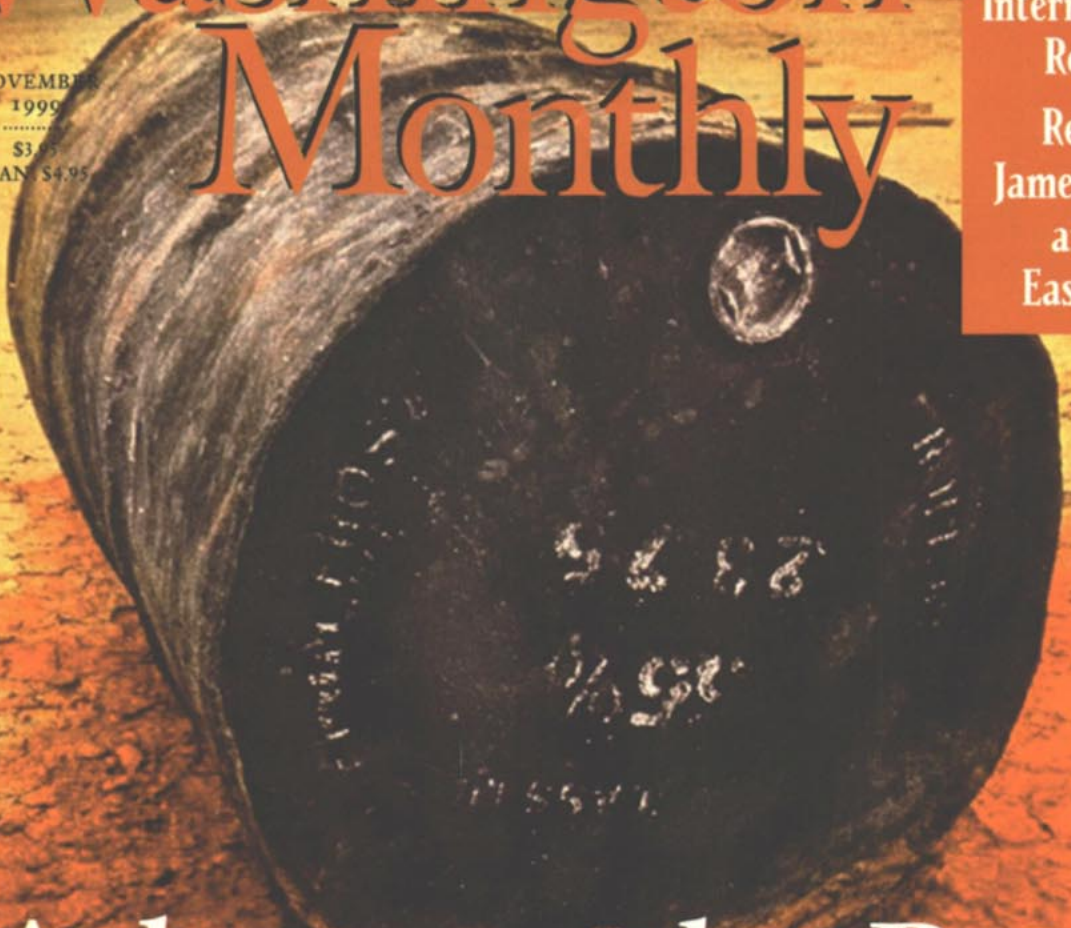

Asleep on the Beat

Why Aren't Our Environmental Laws Being Enforced?

By Robert Worth

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Letters

Grade Inflation

The letter to the editor in the September edition, from David Grant, prompted me to look up your "Tilting at Windmills" mention of federal government "deadwood" in the July/August issue. (By the way, this is the first time I've checked out the Monthly's web site—it's very good). I went looking in the Office of Personnel Management (OPM) web site for the study you cited. Before finding it, I came across "percentage distributions of performance ratings" of federal employees, for fiscal years 1991-96. The ratings are disturbing.

The 1996 numbers showed that fewer than one-tenth of 1 percent of federal employees had "unacceptable" performance—and in three of the four categories listed, there were *no* "unacceptable" performers. The next rank up, "minimally successful," had fewer than three-tenths of 1 percent of all employees (two of the four categories had one-tenth of 1 percent, and the other two had three-tenths of 1 percent). In other words, only a fraction of 1 percent of federal employees were less than "fully successful" in job performance. Obviously, in any large group of human beings there are going to be more under-performers than these numbers show. And juxtaposed with the OPM study you cited, the ratings show that supervisors (or whoever does the ratings) are giving many non-performers a free pass.

In all four employee groupings, more than three-quarters of all employees were rated in the top two to five rating categories. In the supervisors and management officials category, fully 88 percent of employees were rated "outstanding" or "exceeds fully successful." In other words, those who presumably are most likely to *give* ratings are mostly likely to *get* high ratings.

ROBERT WARD
THE PUBLIC POLICY INSTITUTE OF NEW YORK STATE, INC.
Albany, N.Y.

Bean Time

I greatly appreciate Heather Bourbeau's favorable review of my book, *Uncommon Grounds: The History of Coffee and How It Transformed Our World* (October 1999). But I am mystified and distressed that she wrote: "He [Pendergrast] credits coffee with the end of slavery in Brazil." On the contrary, I made it clear that Brazil maintained slavery until 1888, longer than any other country in the Western Hemisphere, precisely because of coffee. Bourbeau also characterized my coverage of Starbucks as "biased and bemused." While I may have been "bemused," I took great pains to be even-handed and I gave Starbucks full credit for its achievements while also quoting its critics.

MARK PENDERGRAST
Essex Junction, Vt.

A Penny Saved ...

I'm all for putting drunk drivers behind bars. I also believe that federal tax money should be spent to assist local government's law enforcement efforts. But the numbers cited in your September "Tilting at Windmills" made me stop and think. An extra $61 million in federal dollars resulted in an additional 2,682 arrests. That's over $22,000 per arrest. That's just for the arrest; it doesn't include the cost of prosecuting and jailing the arrested driver. Even die-hard liberals like me—people who believe throwing money at a problem is sometimes the best solution—have to wonder whether there isn't a better way to combat this particular problem.

JEFFREY FRIEDMAN
Anchorage, Ala.

Scary Stuff

As one who has used Rezulin, David Willman's article scared me to death. Although I do not think that I have experienced any bad, permanent consequences of it, I do not really know. It did work for me to a point, but there were some serious side effects with other medications. I am now on one of the newer medications of that class with better results.

The Mayo Clinic has taken Rezulin off of its list of recommended medications. It was interesting to hear my pharmacist and doctor tell me of the company's efforts to keep people on the drug. It sounds as if they are almost ready to give it away.

The whole episode scares me about drug safety in our country. Can we really be sure that our medications are safe for us to take? Remember that in many cases we are taking poisons.

We must be grateful for reporters such as David Willman. Your other article on investigative reporting in newspapers makes clear how precious a resource he is for our nation and safety.

JOHN D. MILLER
Fairmont, Minn.

David Willman's six-page article, "Bitter Pill" (September 1999) omits pertinent facts regarding Rezulin, our medication for type 2 diabetes, and Warner-Lambert.

Mr. Willman's disturbing use of inflammatory and prejudicial language e.g. "commercially steeped milieu" and "cooing to doctors" reflect his penchant for biased reporting and complete disregard for objectivity. He consistently fails to address Rezulin's benefits. The truth is, hundreds of thousands of people have safely benefited from Rezulin.

In addition to the many factual omissions too numerous to address in this letter, Mr. William suggests that a vast conspiracy of dozens of highly respected endocrinologists, diabetologists, academics, the U.S. Food and Drug Administration (FDA), two FDA-appointed advisory committees, members of Congress from both sides of the aisle and countless national and international diabetes thought leaders are all willing to look the other way and ignore the health and safety of millions of people with diabetes, simply to benefit Warner-Lambert. This is absurd.

When Warner-Lambert received reports of rare, but serious, liver-related adverse events including deaths and liver transplants, we acted swiftly. We not only submitted the required adverse event reports, we took the additional step of immediately contacting

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the FDA to alert them to a potential problem. We did this with one mission in mind, to insure the health and safety of people with type 2 diabetes. Mr. Willman's "Bitter Pill" is a grave disservice to the millions of people with type 2 diabetes and an insult to those who care about them.

PETER B. CORR, PH.D.
PRESIDENT, WARNER-LAMBERT/PARKE-DAVIS RESEARCH AND DEVELOPMENT
Morris Plains, N.J.

Just Thanks

Thanks for Mr. Umansky's excellent article, "Shooting the Whistle Blower." As an involved party, it is good to see a correct representation of the facts, particularly in a publication of the quality of *The Washington Monthly*.

ROBERT A. SPEIR
Washington, DC

Stay At Home

Normally, your criticism is right on target, but you blew it in your September column when you called it "a national disgrace" that more than half the country's three and four-year-olds aren't yet in school.

While no fair-minded person could quarrel with the importance of stimulating those young minds—so ablaze with curiosity at that age that they can even get the tired old brains of their elders to show an occasional spark—it just isn't true that shoveling tots into pre-school is the best way to get the job done.

Tell me how it can possibly be true that a child who could be home with a college-educated, loving, and completely interested parent or two would benefit from hanging out in what amounts to a holding pen for a dozen or more overactive kids under the guidance of teachers who often lack the smarts to challenge even one of their own charges.

What is really the national disgrace is that so many parents plunk tiny children into daycare rather than nurturing them day in and day out until they are ready for school. There are, no doubt, many toddlers who are better off in some sort of class setting because their home life is so disgraceful, but let's hope that our society hasn't sunk so low that it can possibly be true that more than half are better off someplace other than their very own homes.

STEVE MAJERUS-COLLINS
Bristol, Conn.

Refreshing, But Wrong

As a newspaper editor, I found "The Broken Wall" a refreshing piece of journalism. Sadly, few publications in the country would print such an article about selling credibility for advertising. It's true that such a practice damages credibility, but so does another: inaccuracy.

Blake Fleetwood notes that William Franke, chairman of America West, dashed off a letter of protest to *The Arizona Gazette* because of articles by reporter Ed Foster that pointed out maintenance problems at the airline, which is based in Phoenix. The newspaper Foster worked for is *The Arizona Republic*. The afternoon paper, owned by the same company, was *The Phoenix Gazette*. Perhaps Fleetwood, like the company itself, merged the two. It was 18 months after this merger that Foster was laid off. It should be noted that at the time of the merger, Phoenix Newspapers Inc. said there would be no layoffs. Another tidbit: America West czar Franke sits on the board of Central Newspapers Inc., the parent to PNI, which publishes *The Arizona Republic*.

At least this mistake can't be blamed on advertising pressure. All in all, I still appreciated the article.

GARY CROOKS
Spokane, Wash.

Correction

The September "Who's Who" column included an item drawn from a *Washington Post* article claiming that a son of former Sen. John Tower had been a member of the Texas Air National Guard with George W. Bush during the Vietnam War. Tower had three daughters and no sons. It was Texas Gov. John Connally's son who was a member of the Guard.

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Tilting at Windmills

BY CHARLES PETERS

Warren Beatty vs. the Broadcasters • Florence Nightingale vs. the Bureaucrats
The September Spending Spree • Carving Up Conrail • It's All in the Label

A FEW YEARS AGO I WROTE about a woman's résumé that, after listing the schools she attended, stated that her son and daughter were at Yale and Brown. Had parents become so neurotic about having the right credentials that they were willing to borrow Junior's? I hoped I had not spotted a trend. Alas, according to Monique Yazigi of *The New York Times*, I had—and, what's worse, parents are now even exploiting their children's primary schools.

In fact, the headmaster of Spence—it's a super-chic private school in Manhattan—says she saw parents who lobbied for their seven-year olds to be assigned to class with children who weren't their friends but whose parents were rich and prominent, in the hope that the students would become friends and so would the parents. Back-to-school nights are, according to the headmaster, the scene of "furious networking" and have "the aura of a competitive Park Avenue cocktail party." Poor little Jennifer. If she doesn't wangle that partnership for Dad (or Mom), she may be washed up at seven.

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I HAVE YET TO LEAP ON THE Warren Beatty bandwagon. But I was struck by one thing he said in that speech he gave at the Eleanor Roosevelt Award dinner last month: "Broadcasters are not only among the biggest campaign contributors, they have the power to decide the candidates you see and for how long you see them. It's a rare man in public life who's got the guts to go up against the broadcasters."

This magazine has long crusaded against the giveaway of the public airways to the broadcasters. It's been a lonely fight because so much of the big media also own television and radio stations and doesn't want the whistle blown on what they're stealing from the rest of us. We aren't going to have real campaign finance reform until the broadcasters give free time to candidates—which is the minimum the broadcasters should do in return for all the free benefits the public has given them.

The courts are run primarily for the convenience of judges and administrative personnel.

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A NEWSWEEK REPORTER ASKED a 15-year-old boy why he bought his clothes at Abercrombie and Fitch. "It's cool to be wearing it," he explained. "It's the name."

A similar explanation may help you understand why Saks Fifth Avenue customers are willing to pay $235 to outfit their dog in a trench coat. It's a Burberry.

Or maybe it's just that people have money to burn these days. While the poor languish in poverty, the affluent have so much money they don't know what to do with it. Yet they still seem driven to make more even when making more doesn't make sense.

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FOR MANY YEARS, PEOPLE HAVE seen membership on educational and charitable boards as a way of doing good and at the same time advancing their careers. Sometimes they will use the board to get business, often legal or financial, for their own firms from the institution itself. More often they will see the board as a way of making connections with other potential clients. Whatever the motivation, competition for places on desirable boards has become so intense that, according to a recent article by Monica Langley in *The Wall Street Journal*, there are now agents who specialize in placing you on a board for a fee.

Consider the case of Katherine Brandt. For a fee of $1,500, she was placed on the board of the Make-A-Wish Foundation. She got her money's worth and more. "My involvement on a nonprofit board was key to my being elected partner last year," she told the *Journal*. "I got extra points for being out there in the community in a favorable light."

The value of a board membership can perhaps best be ascertained by the look in the eyes of a lawyer or banker when he hears an important client respectfully quote a brilliant remark by a rival lawyer or banker at a recent board meeting. His stomach grinds as he contemplates the possibility that the client will be lured away by the brilliant rival.

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THE FAMILY-RUN PHILLIPS COLlection in Washington used to be my favorite art gallery. It was comfortable, like a home. In fact, it had been the family residence. But not long ago it added a spiffy updated new wing, and recently redid the old

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house. "Painted, polished and relit," writes Paul Richard of *The Washington Post*, it now has the "curators, computers, archivists, conservators, registrars, accountants, fund-raisers and thermostats that forward-thinking, show-arranging art museums need." Much of this I regret. Nonetheless, the Phillips remains, along with the Frick in New York and the Gardner in Boston, among this country's best small collections.

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"HA! YOU GUYS WHO CONTEND that tobacco companies should reimburse the government for the health expenses it has incurred because of tobacco forgot one thing—the money the government saves because people die prematurely!" I've heard this argument from a number of conservatives, most recently from Matthew Rees of *The Weekly Standard*. One could take on the economic argument by adding up tax revenues lost when people die prematurely and aren't able to fulfill their earning potential.

But that misses the main point, which is the moral lunacy of the conservative position. Do they really want to contend that there is social good in dying young, in not living a normal lifetime? It can't be long before a Tom DeLay proposes giving Philip Morris a tax credit for killing, say $100 for each person who dies prematurely from a tobacco-related illness. Seriously, one wonders if these conservatives have ever watched a friend endure the agony of slowly dying from lung cancer.

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THE WEEKLY STANDARD'S Matthew Rees is to be distinguished from the great political consultant Matthew Reese, who died last year. Shortly before his death Matt told me that one of his regrets was the opinion research he had done for Philip Morris.

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WHAT HAPPENS WHEN YOU MIX the modern mania for making money with the modern mania for psychotherapy? The answer is in this report from Timothy Burn that appeared last month in *The Washington Times*: "A D.C. therapist yesterday agreed to pay nearly $90,000 in fines to settle charges that he profited from insider information gleaned during a 1996 psychotherapy session with an employee of a Gaithersburg computing company."

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TENURE IS A PROBLEM THIS magazine has long labored to get liberals to face. Most recently in our May issue, Robert Worth demonstrated how it protects the mediocre and the incompetent. Now comes a solution from an unlikely source: the New York City Schools. Perhaps it's a case of desperation inspiring creativity. Anyway the city is offering its principals a substantial incentive to surrender tenure. It's a hefty raise—33 percent. *The New York Times*, in the voice of editorial writer Brent Staples, is urging the principals to accept the deal. Staples, who is black, is one of the growing number of African Americans who have abandoned the old solidarity that protected incompetent black principals. He understands that tenure is less important than a good education for the children who need it most. You also see this trend in African American support for vouchers—which now stands at 48 percent—as an alternative to the worst public schools.

(This doesn't mean I think vouchers are the magic bullet for education. What I do believe is that liberals have to show the public school establishment that we are going to stop sacrificing today's children to reforms that are always promised for tomorrow but rarely delivered.)

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SPEAKING OF PHILIP MORRIS, IT IS not only a major lobbyist in Washington, it also tries to influence state government. It, for example, "has long been one of the biggest spenders on lobbying in Albany," according to a recent article in *The New York Times*.

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STUDENTS OF BUREAUCRATIC culture will love this one: Gateway Computers took a full page ad in *The Washington Post* of September 14 to announce "It's our annual 'spend your budget before it's gone' sale." Those unschooled in the art of government budgeting may need a little background. As the end of the fiscal year approaches, federal officials grow increasingly anxious that they will not be able to spend all of the funds appropriated to them by Congress. If they fall short on September 30, they fear that when they ask for funds next year, Congress will say "you didn't use what we gave you last year, so we'll give you less this year." Since no prospect is more horrifying to a bureaucrat than a budget cut, enormous effort goes into spending every last dollar in September.

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A DISTURBING PARALLEL TO Robert Worth's finding about declining enforcement of environmental law in the Clinton-Gore administration comes from the Occupational Safety and Health Agency. OSHA's inspections have fallen from a high of 89,859 in 1975 to 33,697 in 1998. In 1996 they actually fell lower, to 25,860.

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ON JUNE 1, NORFOLK SOUTHern and CSX carved up Conrail, each taking over operations of roughly half of its rail network. How well have they done? According to the *Journal of Commerce*, two-thirds of shippers said CSX's service was worse than they got from Conrail. Norfolk Southern was even more inefficient and unreliable. More than 80 percent of its shippers said the service was worse.

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I AM SOMETIMES A TAD TOO quick to spot a trend when it's headed in a direction I applaud. The

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most notorious example was when we ran a cover story in 1979 predicting that "the New Idealism" was the wave of the future. The next year Ronald Reagan was elected president and the country embarked on an unprecedented orgy of greed.

Still, I was delighted by a front page story in *The Washington Post* last month that said "the teaching profession, shunned for decades by college graduates in search of higher pay and prestige, is attracting a growing number of people who started their careers in another field." Among the examples cited by the article are Mary Ann Richardson, who gave up a lobbyist's salary of $113,000 to teach at Falls Church High School (in Virginia) and Jerome Peck, who left a six-figure salary as a corporate CFO to teach at Seneca Ridge Middle School (in Maryland). Peck says he did it because he wanted work he would enjoy doing. Richardson says "I have found a purpose."

We aren't going to have real campaign finance reform until the broadcasters give free time to candidates.

The number of university programs for second-career teachers is nine times greater than in 1984. A director of employment for the Fairfax County (Virginia) schools says: "People are starting to step back and say 'Other things are more important to me, and I want something more fulfilling.'"

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DID YOU KNOW THAT THE cleanup of nuclear waste now consumes one third of the Department of Energy's budget? Ultimately the cleanup bill is expected to total $147 billion.

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INDEPENDENT COUNSEL DONald Smaltz spent $21 million on his investigation of Mike Espy, the former secretary of agriculture. What did he spend it on? Subpoenaing Espy's high school transcripts and interviewing his old girlfriends, among other things. Smaltz actually, and I'm quoting Michael Grunwald of *The Washington Post*, "gave watches engraved with Espy's name to the counsel staff."

Espy was acquitted. Had the $21 million gone for naught? Of course not, replied Smaltz, "the mere indictment of a public official has as much deterrent value as the conviction of a public official."

What it really deters is the entrance of decent people into public life. Why should they subject themselves to the possibility of being prosecuted by a jerk like Smaltz?

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SPEAKING OF DOE, ONE OF ITS problems at Los Alamos is the time it may take to deal with those guilty of security violations. The reason is that the lab is run under a contract with the University of California. And, according to Walter Pincus and Vernon Loeb of *The Washington Post*, "personnel actions must follow the university's procedures, which include a fact-finding process, rights of appeal and possible arbitration." By the time all that is finished, China will doubtless have everything it wanted, including the time to remove any untidy evidence.

Most of us tend to think of universities as respectable and benign. Contracting with a university thus seems to almost guarantee reliability and rectitude. But I found a somewhat different story when I worked at the Peace Corps in the 1960s. It seemed to me that the great confidence men were no longer trying to sell the Brooklyn Bridge. They had all gone into university administration. When we would negotiate a contract to cover training of our volunteers, we would often find a mysterious but usually hefty—meaning as much as 50 percent—sum added. "Overhead" was usually the explanation, although a detailed accounting of what the overhead consisted of was rarely if ever presented. These bandits have had more than 30 years since then to sharpen the tools with which they extract money from innocent government bureaucrats. I may exaggerate the peril of these practices, but no one should assume that academic gowns always cloak the virtuous.

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THE KEY TO THE GORE CAMpaign's overspending may lie in a recent State Department Inspector General report about the U.S. pavilion at the 1998 World's Fair in Portugal. Like the campaign, the pavilion was run by Tony Coelho.

It seems that Coelho and his staff, according to an Associated Press account of the IG report, "misused $210,000 in donated airline tickets, hired two stepsons of the U.S. ambassador to Portugal and had the government reimburse $26,000 in questionable expenses to a consultant who worked in Mr. Coelho's New York City office." Coelho also "hired his niece for a job and made the government liable for a $300,000 personal loan." Coelho's rental of a chauffeur-driven Mercedes was deemed "especially troublesome" by the IG "because the cost exceeded a $500 ceiling while a fleet of six vans for the pavilion was under-used."

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AMERICAN FATHERS WITH CHILdren under 18 are working an average of 50.9 hours per week; mothers, 41.4, according to a recent study by Ellen Galinsky of the Families and Work Institute. That doesn't leave much time for the kids, does it? And the little time Mom and Dad have at home is often not really their own or their children's. "E-mail, voice mail, cell phones and portable computers all have eroded the boundaries between work time and non-work time. There is no safe haven."

I have been a workaholic for

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many years. But during my son's childhood, my wife was at home. She didn't go to work until he was 14. Maybe this is why I'm a great believer in at least one parent staying home during a child's early years. Or in both parents doing part-time work so they can share child-rearing.

One reason for this I've only noticed since my wife retired last year. She now gets enough sleep every night. She's much less stressed. She's nicer. I'm the beneficiary today. But for a young parent who doesn't work, the beneficiary is the child.

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WHEN DID THE POLICY OF secret-sharing with the Chinese begin? An old friend at the Johns Hopkins Applied Physics Lab tells me that the Department of Defense first opened up the laboratories to touring Chinese during the Reagan administration. That's right, the Reagan administration.

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FROM THAT DEFENSE OF BILL Clinton, I go to another matter where his behavior may be suspect on at least one ground. It's the commutation of the sentences of the 16 Puerto Rican separatists. According to Frank Murray of *The Washington Times*, there have been only three other commutations in Clinton's presidency. And that's out of 3,042 requests. I'm not one of those who believe that there was not a case to be made for commuting the Puerto Ricans' sentences. But was the case that good?

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THE MERIT SYSTEM ASSUMED TO govern the civil service is actually far too often a buddy system. Friends take care of friends. This is true of all branches of government—federal, state, and local.

One of the techniques is to write a job description that only a specific friend is qualified to fill. An example comes from the Lincoln County Schools in my home state, West Virginia. The superintendent advertised for an administrative position that required a Master's degree and administrative experience. Reasonable enough, you say. But the position also required "experience in outdoor education such as the ROPES challenge course" and "training in a regional education service agency leadership program," which of course only one person had.

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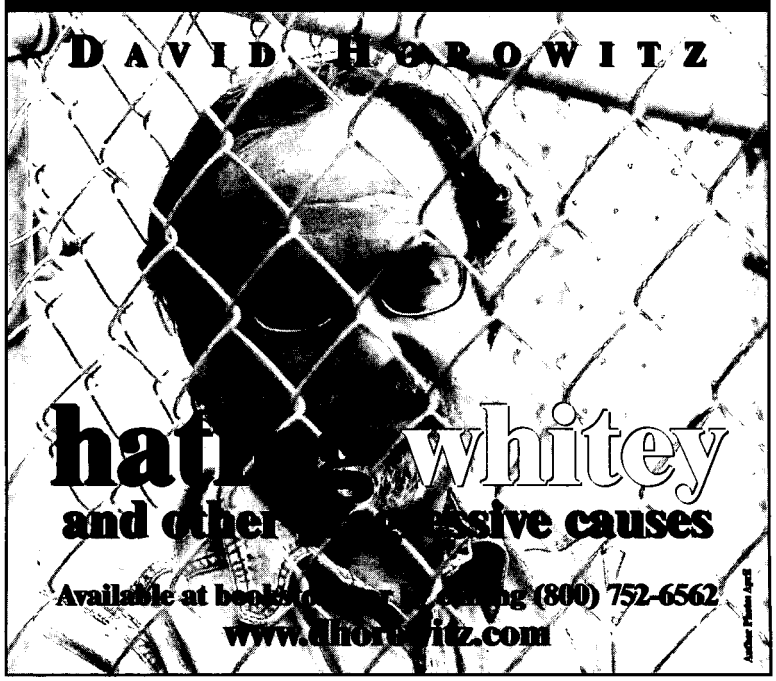
IN OUR SEPTEMBER ISSUE Robert Worth wrote about how Bill Clinton could learn from Lou Gerstner. This item is about what he could learn from Florence Nightingale. When bureaucrats counsel that reform will be difficult, if not impossible, that action will take a long time, if not forever, you need a Florence Nightingale. If you think of her just as a "ministering angel, a gentle lady with a lamp," as Lytton Strachey put it in *Eminent Victorians*, you miss the story Strachey also tells of the determination and imagination she displayed in taking on the bureaucracy. When she wanted to get a hospital built quickly to accommodate the casualties of the Crimean war, "the proper course was that a representation should be made to the Director-General of the Army Medical Department in London; then the Director-General would apply to the Horse Guards, the Horse Guards would move the Ordnance, the Ordnance would lay the matter before the Treasury, and if the Treasury gave its consent, the work might be correctly carried through, several months after the necessity for it had disappeared."

Nightingale, needless to say, did not follow the proper course. She employed a series of bureaucratic end-runs combined with taking responsibility herself. She got the hospital built. When simple cleanliness was the greatest need she exhorted her followers to forget rank because "the strongest will be

"This is a raw and courageous book that turns over some rocks and shows what is crawling underneath. It reveals the ugly reality behind the pretty and politically correct words and visions of our time."
—Thomas Sowell



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needed at the washtubs." I wish we could reprint the entire chapter about her from *Eminent Victorians*. But I do recommend it to every public official who cares about how to be an effective do-gooder.

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WHY IS IT THAT SO MANY REPUBLICANS who oppose funding for education and health on the grounds that we can't afford it then turn around and deprive the government of money by supporting absurdly low royalty payments for oil, gas and mining companies that extract wealth from government land? Kay Bailey Hutchison of Texas is but one example.

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TOO MANY POLICE WERE WORKing during the day and not enough were on duty during the peak crime hours of 6 p.m. to 2 a.m., a recent study of the District of Columbia police force showed. Chief Charles Ramsey ordered a change in schedules so more of the force would be on the street at the right time. The result: a rebellion in the ranks. The new schedule was inconvenient for many of the officers. So it had to be changed. Never mind that it was in the public interest.

This kind of thinking governs too many public employees. I remember how the teachers' parking lot at the neighborhood public school my son attended would be half empty by 3:30 and was deserted by 4. But my favorite examples remain the courts, which are run primarily for the convenience of judges and administrative personnel. If you doubt me, just check your local courthouse and see how many courtrooms are busy at 4 pm on Friday. Many will have been empty the entire afternoon, while witnesses and jurors are told to come back again next week. The public interest in the prompt and fair dispensation of justice comes in last.

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A BIT OF A GOOD NEWS ON THE education front. The Education Department is going to require teacher training colleges to disclose how well their graduates do on state teacher licensing exams. This is an important first step toward strengthening one of the weakest links in the American education system—the teaching of teachers. Too many of these education schools are characterized by low standards and a mindless curriculum with far too little emphasis on making sure the student knows his subject and can present it effectively in the classroom.

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IF LIKE ME YOU GET A BIT NERvous when bracketed by two giant trucks on an interstate, you will not find comfort in a Department of Transportation study that says truckers are on the road an average of 66 hours per week—75 hours if they're non-union. An incredible 10 percent are on the road for 100 hours. One of them is sure to nod off just as you're trying to squeeze through.

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THE MILITARY WASTES MANpower even as it complains about a shortage of manpower. That's one of the most troubling stories in *The Wall Street Journal* series "The Price of Power," by Greg Jaffe and Thomas E. Ricks to which we give a Monthly Journalism Award for September (see page 29). The Navy has seamen spending six hours "stripping and waxing one of the ship's passageways with scraps of steel wool and kitchen sponges" when a mechanical buffer could do the job in two. It would not need to be done at all if a different kind of flooring was used. The Navy concedes that reforms are needed and it intends to implement them—no later than 2008! Guess who needs Florence Nightingale. ●

[illegible] FOCUS [illegible]

[illegible] seeking applicants for Fall/Winter internships. These [illegible] all aspects of magazine production, including business, writing [illegible] Past interns have gone on to careers at *The New York Times*, *The Wall Street Journal*, *The New York Observer*, *The Los Angeles Times*, *The Washington Post*, *U.S. News & World Report*, *Newsweek*, *The New Republic*, *Slate*, *Brill's Content*, the [illegible] Department, the Department of Justice, and the White House. Applicants should [illegible] cover letter, résumé, and writing samples to: **T. Mansbridge**, *The Washington Monthly*, **1611 Connecticut Ave., NW, Washington, D.C. 20009**; [illegible] 232-8413, or e-mail to **tara@washingtonmonthly.com**.

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Deadly Compromise

Liberals and conservatives are both wrong about the death penalty

BY JOSHUA GREEN

IN THE LONG-RUNNING BATTLE OVER America's death penalty, two trends have emerged to stoke passions on opposing sides of the debate. An alarming number of men—82—have been freed from death row, or about one for every seven executed. At the same time, the rate of executions has slowed to a trickle as death row inmates languish on average for more than a decade before their sentence is carried out. Two recent examples bear out the problems in our current capital justice system.

In 1978, Robert Alton Harris, a 26-year-old paroled murderer, kidnapped two California teenagers in the parking lot of a fast-food restaurant. He drove to a remote canyon where he killed the two boys, then finished the hamburgers they'd been eating and drove off. Harris was later caught robbing a bank. He confessed to the murders and was sentenced to death in 1979. Yet he managed to delay his execution for 13 years by repeatedly manipulating the appeals system. Harris and his lawyers challenged the quality of his psychiatric evaluation, claimed California's gas chamber was unconstitutional, and argued that the death penalty discriminated against younger killers, males, and those who killed whites. Each of these claims stalled his execution. In a flurry of last-minute appeals, the Supreme Court overturned four separate stays on the night of Harris' execution before it took the unprecedented step of forbidding lower courts to issue further stays. By the time he was finally put to death in 1992, Harris had managed to get more than 20 appeals.

Like Harris, Aaron Patterson's case centered on a murder confession. He was subsequently sentenced to death for the 1986 stabbing deaths of an elderly Chicago couple. But Patterson is one of Illinois' "Death Row 10," a group facing execution who claim their confessions were beaten out of them by a notorious Chicago police lieutenant since fired for abuse and torture. No physical evidence connects Patterson to the murders. The knife was never found. A fingerprint at the scene—not a match—has inexplicably disappeared. The lone witness against him, a teenager who claims police coerced her testimony, has tearfully recanted.

While Harris is a metaphor for the conservative case against the current capital justice system, Patterson's case has been seized upon by abolitionists. Both are justified in their outrage. More than 20 years after its reinstatement, the death penalty is an unwieldy and ineffective compromise between the roughly 70 percent of Americans who favor capital punishment and the minority who fiercely oppose it. The present system is, quite literally, the worst of both worlds. While an ideological battle has been waged in court, a bottleneck has developed in the nation's prisons. Currently, 3,565 inmates sit on death row, and new arrivals average 300 annually. Yet despite rising numbers of death sentences, executions have never topped 100 in a single year. Everyone is being sentenced to death and no one is dying.

Death Born Again

In the landmark 1972 case of Furman vs. Georgia, the Supreme Court struck down the death penalty on four grounds: it was imposed arbitrarily; used unfairly against minorities and the poor; its infrequent use made it an ineffective deterrent; and lastly, state-sanctioned killing was no longer acceptable behavior. The decision resulted in tremendous uncertainty. Each justice filed a separate opinion, an unprecedented move in 20th century jurisprudence, yielding the longest written decision in Supreme Court history. The length is indicative of the decision's complicated rationale. While the case for abolition earned the five votes necessary, the motivation for each vote varied. This uncer-

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tainty left the door open for states to write new death penalty laws that might pass constitutional muster.

Abolition was never very popular. Polls taken in March 1972, shortly before *Furman* was decided, showed a 50 percent approval rating for capital punishment; that number jumped to 57 percent by November. Within the year, 19 state legislatures passed retooled death penalty statutes they hoped would meet the vague standard of constitutionality hinted at in *Furman*. By the time the Court allowed the modern death penalty by upholding Gregg vs. Georgia in 1976, 35 states had passed new death penalty laws. They have been in dispute ever since, and the result is today's beleaguered system.

Shortly after *Gregg*, the court acceded to death penalty opponents by outlawing mandatory death sentences and instituting complex safeguards. This gave rise to a problem that still hampers the courts: Unable to abolish capital punishment in the legislature, defense lawyers have sought to institute a de facto halt to executions by stalling cases in court. The more savvy, like Harris' lawyers, quickly mastered the art of "sandbagging," or using delay tactics to stop an execution. By filing spurious last-minute appeals and repeatedly seeking reversals on obscure technical grounds, activist lawyers (and some judges) could bring the system to its knees. Angered by this end run around the law, conservatives have limited the appeals process at the state and federal levels and expanded the scope of crimes punishable by death. The unfortunate result, as federal prosecutor David Lazarus wrote in this magazine last year ("Mortal Combat," June 1998), is that abolitionists have clogged the courts with endless litigation and slowed the number of actual executions to a trickle. The average delay from sentencing to execution has grown from six years in 1985, to eight years in 1990, to 11 years today.

The Art Of Delay

Delays in death penalty cases are caused in part by the tacit acceptance of such maneuvers by liberal judges. The most famous examples are former Supreme Court justices William Brennan, Jr. and Thurgood Marshall, who voted against every death sentence that came before them. Recent limits to federal appeals should eventually block some avenues for delay. But as old methods are thwarted, new ones crop up. Kent Scheidegger, legal director for the conservative Criminal Justice Legal Foundation, cites as an example an increase in the use of "Ford claims"—assertions that a prisoner has gone insane *since* sentencing and therefore can't be executed under the Eighth Amendment. (This is a particularly savvy ploy, because arguing that insanity occurred after the trial phase means the claim isn't subject to a limit on appeals.)

Other recent tools that have been used for manipulation are Marsden and Faretta motions, which a defendant can use to fire his lawyer and represent himself. In a notorious California capital case, the defendant filed numerous such motions, going so far as to sue two court-appointed defenders for $1 million in an effort to delay his sentence. Common sense needn't be a requirement for a claim—a Montana prisoner, who'd held off his execution through two decades of appeals, finally argued that the length of time he'd had to endure on death row was unconstitutional.

Though liberals are commonly faulted for delays, conservatives also slowed the process by making access to court-appointed attorneys more difficult for the poor. In 1995 more than a quarter of California's capital defendants didn't have a lawyer and their cases couldn't begin until one was assigned. And, with conservative anger buttressing support for prosecutors' win-at-all-costs attitude, unscrupulous prosecutors regularly tie up capital cases by fighting defense requests for information.

Innocence Expired

The unfortunate response to dilatory tactics has been to curtail the judicial process by implementing strict time limits. Thirty-six of the 38 death penalty states impose deadlines for presenting new evidence following a conviction. The strictest such law is Virginia's notorious "21-Day Rule," which limits the introduction of new evidence to 21 days after trial. Other states have similar limits that range from 30 days to a year. These laws were intended to establish finality in all criminal cases and most predate the modern death penalty. But they have recently been championed by conservatives as a way to combat delays in execution, despite the obvious risk they carry of killing or imprisoning innocent people.

In recent years, the law's shortcomings have become apparent. Virginia's 21-Day Rule, for example, forbids new DNA evidence from being introduced more than three weeks after trial. And, amazingly, the law doesn't even make provisions for illegally suppressed evidence—such evidence is considered "new" in Virginia and therefore is inadmissible. (A prisoner would instead have to file a federal appeal.) The problem was ably summed up in a defense attorney's testimony before a Virginia legislative committee: "After 21 days, no court in this state, nor any judicial forum

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afterwards, can save you from execution based on the proof that you are innocent."

The circuit court that oversees this system—referred to locally as "the rocket docket"—has succeeded in speeding the processing time of death penalty defendants. Capital cases in Virginia move much more quickly than they do elsewhere. But the results come at a price. One of the most controversial examples is the case of Earl Washington, Jr., a mildly retarded man sentenced to death for the 1982 rape-murder of a Virginia woman. A concerned prosecutor later ordered DNA tests, unavailable at the time, that provided strong evidence Washington is innocent. But because the evidence appeared after the 21-day deadline, Washington had no avenue for appeal. The only recourse for a prisoner with exculpatory evidence is gubernatorial clemency. But governors aren't part of the judiciary and can't order a new trial. And of course they're heavily subject to political pressure. On the last day of his term, Virginia Governor Douglas Wilder commuted Washington's sentence to life in prison. But with no judicial outlet to order a new case, Washington remains in prison.

More than twenty years after its reinstatement, the death penalty is an unwieldy compromise between the roughly 70 percent of Americans who favor capital punishment and the minority who fiercely oppose it.

Such problems are exacerbated by the fact that many prisoners can't find attorneys for post-conviction hearings—in 1995 Congress eliminated the resource centers that once provided them. Without an attorney, the possibility of correcting a mistake like the one in Washington's case all but disappears. State post-conviction review is the first opportunity to present claims of ineffective counsel and the last chance to investigate claims like actual innocence and prosecutorial misconduct. Ironically, the Supreme Court has affirmed that indigent death row inmates have a right to counsel at federal appeals. But without a lawyer at the state level, their claims will doubtless never make it that far.

Fools On The Hill

While state legislatures have failed to improve the system, reforms at the federal level have also been woefully misguided. In the mid-1980s federal judges couldn't find enough qualified lawyers to handle death penalty cases. Attorneys assigned by the court were expensive and didn't necessarily provide competent counsel. So in 1988, at the behest of federal judges, Congress created legal resource centers to process and defend the poor. By most accounts, these centers served their purpose.

But in the tough-on-crime environment of the early '90s, the centers became a political football. Congressman Bob Ingis (R-South Carolina) branded them "think tanks for legal theories that would frustrate the implementation of all death sentences." In 1996, citing fiscal priorities, Congress eliminated federal funding for resource centers—$20 million for 21 centers nationwide. Budget hawks figured they'd won a double victory. They reasoned that by choking off agencies that represent death row inmates they'd rid themselves of an impediment to executions, while saving taxpayers millions in the process.

That thinking backfired. A critical function of resource centers—one intended by federal judges—was to keep the appellate system functioning smoothly. With organizational support, full-time lawyers kept tabs on death row cases, filed appeals promptly and steered capital defendants through the complicated legal system. Qualified representation meant indigent defendants didn't require the court's help. The infusion of lawyers trained in capital cases helped offset the costly and often inexperienced court-appointed lawyers who otherwise handled capital cases. Resource centers were a government program that worked. So their elimination had the opposite of the intended effect—it slowed the pace of appeals and increased the likelihood of error.

Other measures were similarly misguided. In 1994, by threatening to block the federal crime bill, congressional Republicans forced passage of the Federal Death Penalty Act, making 54 new crimes death-penalty eligible. The law was largely a symbolic measure—there hadn't been a federal execution in 31 years. Yet death-penalty offenses suddenly came to include drug dealing crimes, conspiracy to commit murder even if no murder was committed, and such rarely committed crimes as murder of a federal poultry inspector. The broadened scope only added to the courts' bur-

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den. Federal death sentences soared from 28 the year before the law, to 153 in 1997. Even conservatives thought the law frivolous. "It was an easy way to appear tough," said Scheidegger. "Congress enacted a long string of federal death penalty crimes, most of which are entirely unnecessary, so that they could go back and claim to be tough on the death penalty. It was a rather cynical ploy."

Cynical but costly. Last fall, a judicial conference report determined the average cost of prosecuting a federal death penalty case to be $365,000. The same case cost $218,112 to defend. But if a sentence other than death were sought, the defense costs dropped to $55,772. Factored out for the additional convictions, that's a $73 million price tag on a measure that did little more than let congressmen flex their muscles.

Congress responded to the Oklahoma City bombing with its most ambitious reforms to date. The Antiterrorism and Effective Death Penalty Act of 1996 limited to one the number of appeals a prisoner could file in federal court, barring exceptional circumstances, and placed a one-year time limit on their ability to do so. Conservatives believed this would eliminate sandbagging and streamline the appellate process. "No delay in disposition shall be permissible because of general congestion of the court's calendar," the law read.

But like earlier efforts, the Act's aim was largely misdirected—a disingenuous marriage of death penalty and terrorism law that represented a large political compromise. Sponsors touted a connection between terrorists like Timothy McVeigh and speedier laws which, they suggested, would bring criminals to justice. The bill was rushed to passage before the first anniversary of the bombings. But the death penalty "reform" on which the law hinged mainly affected *state* court cases, where the overwhelming majority of death row inmates are sentenced. Terrorists like McVeigh are prosecuted in *federal* court.

Problems At The Source

If one source of the problem is in congress, another is at the local level where most death penalty cases originate. Here, too, there is need for reform. The rate and effectiveness with which the death penalty is used varies drastically from states like Ohio, which has executed just one person since reinstatement, to Virginia and Texas, which together have executed 247 people (44 percent of all executions). In recent years, the scrutiny surrounding cases like Aaron Patterson's has made Illinois ground zero for the death penalty debate. The state's 12 exonerations are symptomatic of the problems in the way cases are prosecuted and defended.

Patterson's case illustrates many of these problems. To begin with, he was represented by public defenders and was therefore an easier target. Numerous studies have shown that public defenders often lack the skill, resources, and commitment to defend capital cases properly. Not surprisingly, 90 percent of current death row inmates didn't have a private attorney. As prosecutor David Lazarus has noted, "Clients of the world's great defense attorneys (and even the good ones) don't receive death sentences. Almost without exception, a prerequisite for receiving a death sentence is the inability to hire a lawyer sufficiently talented or motivated to mount a credible defense." Public defenders, he continues, will "substantially increase the probability that a defendant will be convicted of capital murder as opposed to some appropriate lesser offense."

Overzealous prosecutors are another problem. Tenet number one for the career-minded prosecutor is "get tough on crime." While ambitious prosecutors often tout their death penalty convictions, they're far less likely to question whether such convictions are cost effective or necessary. The number of death sentences later reversed suggests that in many cases they're grossly unfair: 40 percent of death row cases are vacated at some point in the appeals process. This can occur ten or even 15 years down the line, at enormous cost to taxpayers and tremendous injustice to defendants. But as a rule, prosecutors don't abandon death penalty cases for fear of appearing soft on crime. Federal judge Alex Kozinski has pointed out that while 80 to 90 percent of all criminal cases end in plea bargains, capital cases almost always go to trial. There is little justification for this discrepancy, given that plea-bargaining death penalty cases would limit costs and nullify the issue of protracted appeals.

The tough-on-crime mentality also infects state lawmakers who, like congress, can broaden statutes to include more death penalty crimes. Illinois, which in 1977 had seven crimes that qualified for death, today boasts 19. Often, new additions are an ill-considered reaction to high-profile crimes like last year's murder of a neighborhood activist in Chicago, which prompted legislators to make killing an activist a death penalty offense. Such moves are well intentioned but only hamper an overburdened system.

Prosecutorial excesses also run up costs. While defense lawyers are commonly faulted for delays, prosecutors share the blame. Because of their never-say-die attitude toward upholding convictions, they often drag

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their feet when exculpatory evidence raises questions of innocence. Prosecutors fought to prevent DNA testing that ultimately freed Ronald Jones, the last man to walk off Illinois' death row. Jones spent nearly two years on death row *after* tests proved his innocence because prosecutors were unwilling to abandon their case.

In fairness, Illinois has taken steps to address the most serious shortcomings, and other states would do well to follow its lead. Recognizing the need for adequate representation of the poor, the state legislature stepped in to save Illinois' legal resource center when federal funding ended. The result is the Capital Litigation Division of the Illinois State Appellate Defender's Office, essentially a state-funded resource center.

Illinois also joined New York in passing a provision for post-conviction DNA testing. The law acts as a safeguard against mistaken convictions by allowing inmates to petition for DNA analysis of evidence used to convict them. No other state has used DNA to uncover more wrongly convicted defendants than Illinois. Perhaps most noteworthy in the near term is Illinois' activist community. It has played a part in freeing all of the 12 released death row inmates and forced many of the positive changes in the criminal justice system.

Finally, most of the state's major media outlets have given nuanced coverage to death penalty law and have provided detailed reporting on flaws and abuses. This is in marked contrast to the national media, which eagerly covers high-profile exonerations but shies away from stories that don't rise to the level of a *60 Minutes* piece. Consider, for example, the sloppiness of the May 31 *Newsweek* feature on Aaron Patterson and Northwestern University professor David Protess' efforts to free him. "The *Newsweek* article had by my count and my students' count 21 factual errors in three pages," Protess says. "In the entire time that I've been involved in this, I've never seen an article more off-base than that." The author wrote that Patterson "consented to an oral confession," which he did not. She also wrote that the jury "found it hard to believe that Patterson, the son of a Chicago police lieutenant, would be mistreated." In fact, the jury never heard any evidence of physical abuse, thanks to a pretrial ruling. If journalists were to cover the death penalty as thoroughly as they've covered welfare reform, such carelessness would be less common, and the shortcomings of the death penalty system would be a far more prominent public concern.

On The Merits

Pragmatism should eclipse the battle between the extremes of liberalism and conservatism that have reigned on the death penalty. Since courts have been unable to speed processing time adequately, the solution is to reduce the number of death sentences handed down. The first step is to provide resources for the system to function properly, then to enact laws that ensure it does so in a timely manner. Improvements should begin with the resurrection of legal resource centers. Qualified resource center attorneys would prevent prosecutors from running up capital convictions against unprepared or unqualified public defenders. In fact, the motivation for ambitious prosecutors would shift from quantity of convictions to quality. They'd need to be certain of an airtight case before seeking the death penalty, since failing to win a conviction is a political embarrassment. This might even have the secondary effect of removing the stigma attached to settling dubious capital cases.

Resource centers would have a trickle-down effect that would alleviate problems later in the justice cycle: only the most deserving killers would be executed; more convictions would be upheld; having competent lawyers at trial would eliminate the claims of incompetent counsel that delay so many cases today. Cases would proceed more quickly because defendants wouldn't have to wait years for the court to assign them an attorney. And fewer convictions and appeals would curtail the staggering cost to taxpayers.

Even the most conservative estimate of savings is substantial. Federal Judge Kozinski estimates each death penalty case (in state court) costs taxpayers $1 million. If each case were thought of as a million-dollar tax increase, prosecutors would have to be much more discriminating. Cutting the number of death sentences in half would save $150 million each year. To put that figure in perspective, resource centers would need to prevent just 20 cases a year to cover the funding Congress cut for them in 1995.

States need to institute minimum qualifications for defense lawyers. Studies show that often it's the worst lawyers, not the worst criminals, who draw death sentences—a fact illustrated in in the death penalty case of George McFarland in Texas, whose lawyer repeatedly fell asleep in court ("It's boring," he explained to the *Houston Chronicle*). This reform too would cut time and cost. The justice department concluded last fall: "Assuring appropriate resources for the defense at the trial stage minimizes the risk of time-consuming and expensive post-conviction litigation." States could also place time limits on appeals (some already do) to force delay-minded defendants to air their claims early on, rather than withhold

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them for time-consuming appeals. Appeals could also be bundled and made at one time, rather than sequentially. An exception would of course be made for evidence discovered after conviction. Conservatives, no matter how justified their frustration over delays, should not perpetuate a system that refuses to hear exculpatory evidence. By amending laws like Virginia's 21-Day Rule to allow a judge to rule on credible new evidence, lawmakers would remove a major incentive for delay. The amendment should mirror new programs like one in Illinois that allows post-conviction DNA testing. As a final safeguard, Illinois' attorney general has proposed a board to review capital cases before execution—an idea endorsed by both the state bar association and conservatives like Scheidegger.

None of these improvements will come without political leadership. So politicians sincere about being tough on crime need to be held accountable for the problem. This spring the Texas legislature unani-

Who's Who

By Susan Threadgill

Ben Barnes, the former speaker of the Texas House of Representatives, is the man who recommended George W. Bush for a hard-to-get slot in the Vietnam-era Texas Air National Guard. Barnes has said, and the Bush camp has duly emphasized, that neither Bush's father "nor any other member of the Bush family" asked for the favor. But Barnes added, according to *The Washington Post*'s **George Lardner**, that "he was contacted by **Sid Adger**, a wealthy Houston businessman and a good friend of the senior Bush."

For publishers who want to acquire **Bill Clinton**'s first post-presidency book, the man to see is **Robert Barnett**. Although Barnett's wife is better known to the public—she's CBS correspondent **Rita Braver**—he's a bigfoot Washington lawyer who doubles as a literary agent for prominent political figures.

Democrats are happy to hear that **Christine Todd Whitman** won't be running against their nominee for the New Jersey Senate seat that **Frank Lautenberg** is vacating next year. But Republicans are consoled, according to *The Washington Post*'s **David Broder**, by the news that their chance of capturing the seat Senator **Richard Bryan** is leaving are increased by the news that the popular Nevada Attorney General **Frankie Sue Del Papa** has decided not to run. (The Democrats' first choice, former Governor **Bob Miller**, had already declined the honor.) Republican prospects in Nevada are further enhanced by the fact that the leading candidate for this nomination is former Congressman **John Ensign**, who came within a whisker of beating Senator **Harry Reid** a year ago.

The Navy doesn't want a miniature aircraft carrier called the LHD-8. But **Trent Lott** does. He's the Senate majority leader, so the Senate voted $500 million to get the project started. House aides asked the Navy how much was needed. $295 million, it replied. When a Lott senior staffer found out, according to **Tim Weiner** of *The New York Times*, he faxed a handwritten memo to the Pentagon. It said that $295 million was the "wrong answer." The answer he said that "the Navy needs to support" was "$375 million to $500 million." At last report, the Navy was sticking to its guns. But local cynics predict that the majority leader will get his way.

Is **Janet Reno** corrupt, as a good many columnists and editorial writers suggest? Not according to sources who tell us that although she can be a trifle obtuse at times, she's clean. She was also innocent in the ways of Washington and could be conned, as she was by the FBI when it convinced her that children were being sexually abused inside **David Koresh**'s Waco compound.

We were reminded of that episode by a recent column by **Lars Erik-Nelson** in *The New York Daily News*. He points out that the FBI has been guilty of some other whoppers, including lying about the tear gas grenades at Waco and telling **Monica Lewinsky** that she could be imprisoned for 27 years unless she played ball. Nelson finds it a bit ironic that it was an FBI with this record that insisted on prosecuting **Henry Cisneros** for fibbing about the amount of money he gave his mistress.

Speaking of senators who don't

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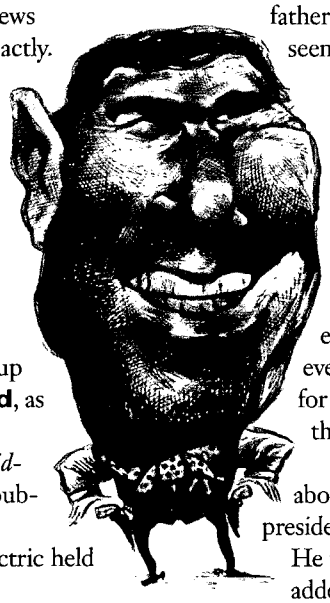
mously passed a bill that would have created an agency to match indigent capital defendants with qualified lawyers. (That Texas, which leads the nation in executions, could pass such a bill *unanimously* is an indication of how badly it is needed). Nevertheless, Governor Bush vetoed it in June. Undoubtedly, he intended to send a message to voters. But his veto killed a practical, bipartisan agreement that would have hastened justice and likely saved lives. Voters should send their own message right back.

The way to repair the "machinery of death" is to shift resources to points earlier in the criminal justice cycle. Only then, with the chance for error greatly diminished, would faster processing be justified. Proponents of capital punishment would have an efficient and equitable system, while opponents could argue abolition purely on its merits. With violent crime at its lowest rate in 25 years, there is no better time for sensible reform. ●

hesitate to flex their muscle, Kentucky Senator **Jim Bunning** has been holding up the nomination of **Arthur Money** to be assistant secretary of defense. Why? Does the nominee have some defect of character or are his policy views beyond the pale? Not exactly. Bunning wants to force the Pentagon to retrofit its safes with a kind of lock made, you guessed it, in Kentucky.



Here's the story behind **John McLaughlin**'s breakup with **Jack Germond**, as told in Germond's new book, *Fat Man in the Middle Seat*. At the 1996 Republican national convention, General Electric held a lunch at which the group appeared, and McLaughlin announced that GE was going to underwrite international distribution of the program. Asked by McLaughlin to comment on the momentous tidings, Germond said "we could take credit for dumbing down the whole world."

For those on the Hill who want to make overtures to **George W. Bush**, the men to see are **Paul Coverdell** in the Senate and **Roy Blunt** in the House.

Lois Romano's *Washington Post* article, from which we extracted that tidbit, was mostly about how **George W.** shuns his father's former aides. It seems they, who knew him from the '88 and '92 campaigns and as an unofficial White House trouble-shooter, don't think very highly of him either. "Virtually everyone interviewed for this story said they never expected to be talking about him as a presidential candidate." He was known, they added, "for having little or no interest in policy, for being confrontational and rarely wearing a suit, and for spitting tobacco in waste cans." Bush supporters are encouraged to chew on this a little bit.

Before **Terry McAuliffe** came through with his guarantee of **Bill** and **Hillary Clinton**'s home loan, three well-heeled friends of the First Family had stiffed them. The non-friends-in-need include former Treasury Secretary **Robert Rubin** and former White House chiefs of staff **Thomas F. McLarty** and **Erskine Bowles**. Bowles had agreed to do it but then backed out the week before the loan was closed. As they say, it's lonely at the top.

Two Republican presidential candidates hope that it is not a case of rats deserting a sinking ship, but there have been some embarrassing defections lately. For **Gary Bauer**, it was his national campaign chairman who left to join the **Steve Forbes** campaign. For **Elizabeth Dole**, it was first **Ari Fleischer**, her communications director, and then **Mike Paranzino**, her press secretary. She, at least, has one consolation—they didn't scramble to another candidate.

The U.S. Senate is the home of the nation's dimmer bulbs, according to **Elizabeth Drew**'s new book, *The Corruption of American Politics*. **Max Cleland** of Georgia is "out of his depth." **Don Nickles** of Oklahoma is "none too bright," **Rick Santorum** of Pennsylvania is "unburdened by brilliance," and Hawaii's **Daniel K. Akaka** is "a room-emptier because of the thinness of his thought."

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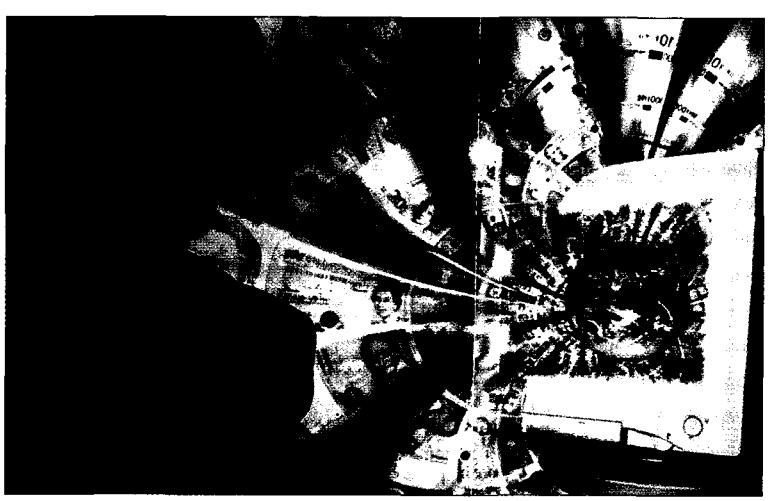
Harlot's Web

Why and how the government should regulate the Internet

BY NICHOLAS THOMPSON

JUDY FISCHER WAS FRUSTRATED BY HOW hard it can be to tell the good guys from the bad guys on the World Wide Web. So she decided to start an organization called the Web Assurance Bureau that would log consumer complaints and develop a seal of approval for ethical companies. After sketching her business plan, Ms. Fischer doled out $277 to a cheap online software dealer with a reputable-looking home page and a money-back guarantee.

The software soon arrived in the mail. But it didn't work. And the dealer that had sold it no longer existed. No Web page, no address, no recourse for Ms. Fischer and certainly no money back. She called the Federal Trade Commission (FTC) but no one knew where the company had gone, where it had come from or, indeed, that it had ever existed. It had taken Ms. Fischer's money and vanished into cyberspace without leaving a footprint.



This experience only confirmed what Ms. Fischer already knew: The Internet is far from the paradise that conventional wisdom would have it be. There's no doubt that it has made products cheaper and information more accessible. But from Matt Drudge's unsubstantiated mudslinging through fly-by-night software companies, the Internet continually extends society's lowest standards. Moreover, as the Net has become increasingly unruly and inscrutable, Congress and the Clinton administration have made little effort to protect consumers. After writing the report that shapes the central organizing principles for the Clinton administration on Internet issues, special adviser Ira Magaziner emphatically declared, "The Internet doesn't need government."

But it does. The Internet under Magaziner and Clinton's genial permissiveness would be like New York City without stoplights.

Surfing USA

The Internet was conceived of in the late 1960s at the Defense Department as a means to help the United States keep going in the aftermath of a nuclear war. Twenty years later, it had become a medium for computer programmers to exchange code. In 1991, Netscape developed its Navigator browser and made it easy for everyday computer users to get online.

In those first heady days, the Web looked to be the ultimate medium for increasing power from the ground up. Any entrepreneur could start a business; any researcher could find near-limitless data; any consumer could choose among 43 brands of nail clippers. The Net promised to inspire democratic initiative all over the world, from shoppers in Lincoln,

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Nebraska to oppressed minorities on the Burmese border.

As the Net started growing, small, idealistic companies were siphoning money and market power from large corporations. A frenetic 30-year-old named Jeff Bezos founded Amazon.com in a Seattle van. Even though he soon had enough cash to wipe out the external debt of Honduras, money didn't seem to be the only thing driving him and he still operated from behind his first desk, an old door balanced on a sawhorse. According to Bezos, Amazon began with noble ideals: to kill sprawling strip malls and to bring cheap books to the people. Did he want to sell books that people weren't interested in? No, he said: "What consumerism really is, at its worst, is getting people to buy things that don't actually improve their lives .... That's approaching evil."

The Internet under Magaziner and Clinton's genial permissiveness would be like New York City without stoplights.

Unfortunately, getting people to buy things that don't actually improve their lives is a good way to get rich, and it wasn't long before the lure of major league fortunes crushed the principles of Internet visionaries. Soon, people began to put businesses online, not out of high ideals, but because they wanted to have their smiling billion-dollar photographs on the cover of *Wired* magazine.

Amazon certainly couldn't escape the change in attitude; last spring, the company was caught offering positive reviews and prominent placement to publishers who dropped bags of gold on the sawhorse. For $10,000 a publisher could get a top slot on the company's home page for its favored book, an author profile, and "complete Amazon.com editorial review treatment." That's trying to get people to buy things they don't want and that don't improve their lives. That's approaching evil. When caught, Amazon abandoned the practice and now disavows it. Still, their action raises serious doubts about whether or not they are sticking to the ideals that Bezos apparently used to hold so dear.

But Amazon isn't the worst Internet company or even close to it. Other Web sites have jumped into the game and many don't just approach evil, they careen right through it. Go online and you'll have no problem finding pyramid stock schemes, virtual slot machines, sites publishing and promoting bungled science that would be rejected by the drunkest editor, and pretty much anything else disreputable you can imagine. Almost overnight, the New York Public Library has become Caesar's Palace—and Caesar's hasn't gotten around to hiring bouncers yet.

Drug Test

Perhaps the clearest way to see the threat that flat-out unregulated commerce poses to consumers is to log on to one of the nearly 400 drugstores that have appeared on the Internet in the past few years. Visiting many of these sites is like going to Tijuana, except better: You can get almost anything you want without having to worry about paying for the gas to drive to the border. Is your doctor reluctant to prescribe a pill that you just know you need? Log on, order, pop it in your mouth, and rock 'n' roll.

The Food, Drug and Cosmetic Act of 1938 requires that a patient consult a licensed doctor before getting a prescription filled, but, like most laws, Internet companies can dodge it. Customers fill out a generic form online which some staff doctor looking for a little extra dough just has to rubber stamp: no physical exam, no waiting rooms, no blood tests.

Ideally, there would be a way to make these online drugstores follow the same rules in letter and in spirit as brick and mortar stores. But trying to wrap current laws around the Internet is often like trying to put a gorilla into loafers. Laws are always tricky and somewhat subjective and they get trickier when companies can relocate overseas with one click of the mouse. As became clear during congressional hearings last July, state governments and the FDA are often unable even to figure out the drug companies' e-mail addresses or location information. And as it stands now, without any government regulation, even if the law could catch up to the drugstore cowboys, the culprits no doubt have maps to the virtual roads heading out of town. A devious Internet company doesn't even have warehouses to pack up if the authorities start sniffing around: A simple command at a Unix prompt "rm -r www" can wipe out all evidence that it ever existed.

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Buy, Baby, Buy

The drugstore issue also exposes another great danger of the Net, that corporations will be able to manipulate customer preferences through the blurring of the lines between content and advertising. Peter Neupert, CEO of drugstore.com (an online firm 44 percent owned by Amazon.com) unwittingly made the point while criticizing his offline competitors: "People have lots of questions, like which of the 10 Saint John's Wort products should I take? Should I even take Saint John's Wort? Retail stores just aren't set up to answer those questions."

No, doctors are. Unbiased consumer information sources are. Companies trying to sell you the product are not.

If Brand X Saint John's Wort buys lots of ad space, maybe, just maybe, Mr. Neupert will recommend it to his customers and prominently cite studies that assert its particular virtues. Think about a drugstore with two equally sound, competing products: one high-margin and expensive, one low-margin and cheaper. The company is going to promote the former and pretend that it is better for its customers' health. "Should I even take St. John's Wort?" "Of course. Try this one." Any company that didn't would soon find itself out of business. People don't have to be immoral, yet alone evil, to be mesmerized by money; much of the time, they just have to want to survive.

The driving logic of the Net has been to eliminate the middleman, like your doctor and the drugstore clerk. But informed, relatively disinterested middlemen are often central to consumer protection and to eliminate them is to destroy an important safeguard. As one crafty scoundrel who had succeeded in defrauding customers in an online auction wrote, "Ha Ha Ha Ha. All you people are really quite ridiculous. You make a deal via e-mail, never see the person, never speak with the person, and then get upset when you get ripped off. You must be a bunch of morons."

Cookie Monster

The Net also has the ability to do more than sell us products that are harmful or make us buy things that we don't need. It can also take away our last shreds of privacy.

Many companies send out packets of information known as cookies when you visit their pages. These cookies attach themselves to your browser and then trigger information within the companies' databases on your next visit to their sites. There are advantages to this: If a page (like *The New York Times* site) requires a password for you to access its information, cookies are what allow you to visit again and again without having to retype your password each time. However, cookies are also how, in the not-very-distant future, Web pages will be able to cough up your shopping history along with your astrological sign, hair color, and phone number. A company called DoubleClick has already compiled a database of 50 million people and is currently working to integrate these data with other companies (like L.L. Bean) that have long-running and extensive data series on specific customers.

According to privacy expert Jason Catlett, companies like DoubleClick will soon be "able to do some really scary things. For instance, say you're browsing a favorite Web newspaper site, and you spend time reading an article on financial planning. Two minutes later, the telephone rings, and it's a guy trying to sell you life insurance... Companies will pay a lot of money for getting someone at the time when they might be receptive to their pitch."

Even more chillingly, a whole industry has sprung up around gathering private, personal, and critical information. Go online and search for someone's credit history or medical records and there'll be no middlemen concerned that you don't match the ID and that you've already asked for six other names that very day. Nor will any cop be around to track you; just run yourself through anonymizer.com and you're virtually invisible. Similarly, it's extremely difficult for individuals to retain copyright protection. The Net is open-source; anyone can copy the code used to create a certain page (go to your browser and click on "view source"). This means that, within minutes, I can create a Web page that looks exactly like *The New York Times* with exactly the same content, colors, and graphics. It's all available and very easy to steal.

Less sinister, but still thoroughly irritating, is the ease with which companies can get e-mail addresses and pummel recipients with untraceable, unwanted e-mail known as "spam." If you've ever gone online, you'll know what I mean. But the government has done basically nothing at all—perhaps because congressional aides serve as middlemen, filtering out the junk e-mail flooding upon congressmen before it can irritate them. Ralph Nader's Consumer Project on Technology has advocated that all e-mail be tagged so that senders of spam can be identified. But, like all other consumer protection regulation for the Net, this bill is buried in a file on

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some congressman's desk, next to a coffee mug that hasn't been cleaned in three months. It wasn't put in the "urgent" folder where so many of the bills to help large Internet companies (like the one protecting them from Y2K liabilities) have gone.

Let Them All Run Free

Elliott Maxwell, a senior advisor for the digital economy at the Department of Commerce, has felicitously said that he wants the Net to become "a clean, well-lighted place." The concept is a good one but the administration's approach of complete private self-regulation is not.

The first principle of Magaziner's grand report of 1997, "A Framework for Global Electronic Commerce" begins: "The Internet should develop as a market-driven arena, not a regulated industry," and the report plunges on from there. The Internet is "changing classic business and economic paradigms." The administration "will encourage the creation of private forces to take the lead in areas requiring self-regulation such as privacy, content ratings, and consumer protection."

The first justification for this paean is the classic laissez-faire mantra that private industry will self-regulate because it has a vested interest in doing so. Nothing would destroy Amazon.com faster than a large-scale onslaught of fraud on the Net. If people can't trust their credit card numbers, people won't buy books online. If enough people die from sub- (or non-) standard drugs from online drugstores, the customers left on their feet are going to race straight back to their neighborhood corner shops.

It's as though Magaziner has resigned himself to a world in which, at most, the government can play Elmer Fudd to the Net's Bugs Bunny. The Net's just too fast, too smart, and too darn hard to catch up with. Surely, part of Magaziner's reluctance to do anything comes from his having burnt his fingers on health care. Part of it also flows from Bill Clinton's desire to remain the smiling Buddha of our economic expansion—not really sure of what he is doing, but surrounded by assurances that whatever he's doing is right. Still, Clinton should know better. As his attempts at health care, environmental protection (see Robert Worth's article in this issue) and tobacco regulation have shown, self-interest has not been repealed and freedom for the wolves is still death for the sheep. Private companies are not going to serve the public interest, they're going to serve their private interest. Sometimes the two will overlap, sometimes not. As even the famous free-marketer Adam Smith wrote in 1776, when people of "the same trade" meet together, inevitably "the conversation ends in a conspiracy against the public, or in some contrivance to raise prices."

Regulation

There are two primary ways for the government to regulate the Net. The first way is to try to restrict activity. Examples include a law mandating that every business disclose its full address and location information in large type on its home page or a law making it illegal to sell or exchange private credit information. The second way is to offer support for people online. Examples include publishing consumer tips online or offering subsidies to people like Ms. Fischer who are trying to limit Net fraud.

Magaziner has resigned himself to a world in which the government can at most play Elmer Fudd to the Net's Bugs Bunny.

Magaziner and Clinton reject both types of regulation. With regards to restrictions, they're mostly right. With regards to supporting consumers, they're dead wrong.

Clinton and Magaziner's legitimate trouble with restriction is that the Net moves too fast to be pinned down. Try to set restrictions on content and, by the time a bill is halfway through its first House committee meeting, every company possibly in violation will have moved its servers to Djibouti. Draft a law restricting the use of cookies and the whole technology will be obsolete two years before the bill reaches the President's desk. Most hopelessly, think what would happen if every country attempted to synchronize content standards: Is it possible to imagine a world where Calvin Klein would develop an advertising campaign that would meet the laws of both Saudi Arabia and the United States?

Moreover, this country's lax approach to restriction has certainly allowed the U.S. online industry to leap ahead of other nations that have taken a plodding, institutional approach to the Internet. France,

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for example, is still slogging through negotiations over cultural content. Unsurprisingly, we're wired and they're not. A friend of mine in Paris whipped out a hand calculator last year that could tell what time of day it was in both Sydney and in London, gloating that this was the (new) new thing. With the United States running full steam ahead and everyone else sipping wine, 70 percent of all electronic commerce now is transacted in the United States.

Supporting Consumers

But the difficulty of restrictive regulation is not an excuse to do nothing. There's still a great deal that the government can and should do to ensure that consumers come out winners in the new bacchanal.

A good place to start government regulation would be to develop a system through the Department of Commerce that certifies Web sites that comply with privacy rules and consumer protection statutes—much like the system that Ms. Fischer was trying to develop when the software company took her $277. If a Web page is completely based in the United States, follows binding U.S. rules, and practices full disclosure, give it the Department of Commerce stamp. If it doesn't, don't. If a program like this were sufficiently publicized, companies like drugstores would fall over themselves to make sure they could qualify and no one would have to worry about seedy companies vanishing into thin air after picking their customers' pockets. Already, a few organizations like TRUSTe offer this service. Yes, there will be lobbyists and redundant lawyers. But at times even bureaucracy is better than being totally on your own.

Second, the government needs to completely reverse its position on encryption so that consumers are more able to protect their personal information from online thieves. It may not be possible to ban the sale of private credit information if it's easy for the thieves and merchants to operate from servers based in Djibouti; but it is possible to make the task of stealing much much harder. Until early September there was a ban on the export of strong encryption software by U.S. companies which, in effect, meant a ban on its development (who's going to make Internet software that you can't even put online?). Effective blocking software known as Pretty Good Privacy (PGP) already exists that allows consumers to have secure places where they can make transactions and store their data. Now that the government has reversed its wrong-headed ban, it should take the further step of helping to bring PGP to the public.

A third step would be to develop a consumer protection code that would activate when first-time users start their browsers. The Department of Commerce has developed a page that explains what to be wary of on the Net, how to navigate, and how to make sure that you don't get duped. It's a great page but it's buried deep. To bring information like this to the mainstream, the government would have to lean on Netscape and Internet Explorer (perhaps in the same way that tobacco companies were forced to put the Surgeon General's warning on their products) to get them to post an informational notice like this as their browser's original starting point. Then, every new user would come to this page the first time she gets online. While people with experience do make mistakes (Napoleon did go into Russia and Ms. Fischer did blow $277) Net fraud threatens new users far more than experienced ones, and a page explaining the potential dangers of the Net could be an important first line of defense.

But most importantly, the government needs to get the glaze out of its eyes and start thinking its basic responsibilities through. The more something is repeated, the more it becomes an unexamined truth—and this is starting to happen with the Net. Everyone "knows" that the Net shouldn't be regulated, but few people can offer a serious rationale. It's a shibboleth, sleepily repeated over and over with only timid voices trying to shout it down. The more time that passes before the government starts to build a regulatory and supportive infrastructure, the more damage will have already been done and the harder the task of regulation will be.

The Net does need to become a "clean, well-lighted place." And it should be the government's job to start sweeping the streets and building the lampposts as soon as possible. ●

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The Think Tank As Flack

How Microsoft and other corporations use conservative policy groups

By David Callahan

On September 18, *The New York Times* ran a breathless front-page account of corporate propaganda. The Microsoft Corporation, we learned, had bankrolled a California think tank—ironically named the Independent Institute—to run full-page newspaper ads supporting Microsoft's claim of innocence in the face of federal antitrust charges. The ads took the form of a letter signed by 240 academic "experts" and purported to be a scholarly, unbiased view of why the government had gone overboard in its case against the company. According to the *Times* article, Microsoft had not only paid for the ads, but was in fact the single largest donor to the Independent Institute, a conservative organization that has been a leading defender of the company since it first came under fire from federal prosecutors.

This revelation has been an embarrassment both to Microsoft and to the Independent Institute, which claims to adhere to the "highest standards of independent scholarly inquiry." But the *Times* is another institution that should be embarrassed, trumpeting the story as a shocking exposé. To be sure, the article had timely elements, running on the eve of final arguments in the high profile Microsoft trial. But framed more broadly, the tale of right-wing think tanks propagandizing on behalf of their corporate masters is now many years old. What was truly remarkable about the *Times* story is that the paper has run so few similar stories and has failed to report on one of the most important ways in which corporate dollars seek to influence public policy.

Three mighty rivers of private money now help shape American politics. The first, and most familiar, is direct campaign contributions to political candidates and parties. Little mystery surrounds this giving. Unmistakably, these donations are naked attempts by corporations and other donors, like unions, to influence the political process. In the past quarter century, untold numbers of news stories have exposed this dark side of American democracy and efforts to dam the campaign spending river have long been underway.

The second great river of money goes to underwrite a vast lobbying apparatus in Washington and state capitals. Again, this is a river that flows largely in public view, thanks to the efforts of muckraking journalists and good government groups. The shopworn image of special interest lobbyists circling around federal and state legislators like buzzards is one reason why so many Americans distrust government.

The third river of private money flowing into politics is less well-known, but nearly as wide and deep as the other two. It is the money which underwrites a vast network of public policy think tanks and advocacy groups. Historically, much of this money—on both the left and the right—has come from foundations. For public policy organizations on the left and the center, this source of money remains dominant, with some funds also coming from unions. However, the big development of the 1990s is that conservative institutes have had spectacular new success in tapping business money to fund ideologically charged policy research.

Over the past 10 years, a huge influx of private sector money has allowed conservative think tanks and advocacy groups to grow by leaps and bounds. Not only are well-known organizations like CATO, the American Enterprise Institute and the Heritage Foundation more flush with cash than ever, but giving by corporations and wealthy businessmen—all of which is tax-deductible—has underwritten the rise of a new generation of smaller and often brasher conservative think tanks like the Competitive Enterprise Institute (CEI) and the Reason Foundation. Corporate money has also fueled the explosive growth of dozens of state-based conservative think tanks, of which the Independent Institute is a prime example. In 1996, according to

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data I published in a report early this year by the National Committee for Responsive Philanthropy, the top 20 conservative think tanks spent $158 million, more than half of it contributed by corporations or wealthy businessmen.

Needless to say, hard-edged corporate executives like Bill Gates are not giving away money for nothing. They expect a return on their investment, and by and large they have gotten one. Corporate giving to right-wing groups has steadily increased as private sector leaders have seen the effectiveness with which conservative think tanks, and their armies of credentialed "experts," advance business interests in the political arena. Money, it turns out, can buy scholars as well as politicians.

The current gusher of corporate funding for right-wing policy work has its roots in the 1970s, when leading conservative thinkers appealed to corporations to fund intellectuals who supported their economic interests. In his 1978 book *Two Cheers for Capitalism*, Irving Kristol argued that corporations should make "philanthropic contributions to scholars and institutions who are likely to advocate preservation of a strong private sector." AEI scholar Michael Novak laid out similar arguments, and both men played a role in proselytizing this view in the corporate world, seeking to open up new funding sources for conservative policy institutions. At the same time, think tank entrepreneurs like Ed Feulner of Heritage and Edward Crane of CATO moved adroitly to cultivate corporate allies. At most conservative think tanks, corporate leaders now make up the overwhelming majority of board members. Even the American Enterprise Institute, among the most scholarly of conservative think tanks, has some two dozen corporate leaders on its board and only one academic, James Q. Wilson.

The extent to which conservative think tanks rely on corporate funding support varies widely. The American Enterprise Institute and CEI have two of the highest levels of corporate support, with both getting roughly 40 percent of their 1996 revenues from corporations. CATO also received major corporate support, although it does not release the exact percentage of its revenue that comes from this source. In 1996, more than 100 corporations contributed to CATO, including Bell Atlantic, Exxon, Microsoft, Phillip Morris, Citicorp, Netscape, R.J. Reynolds, and General Motors. Substantial CATO money also comes from private businessmen.

The degree of direct quid pro quo that accompanies private sector giving to right-wing think tanks can be hard to document. At the most extreme end of the spectrum lies an organization like the Employment Policies Institute, which was started by a group of restaurant companies and gets most of its annual budget from corporate sources. EPI's sole purpose, it seems, is to produce studies opposing labor regulations, increases in the minimum wage, and other policies that benefit workers. Likewise, the American Legislative Exchange Council, which seeks to shape state

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policies, is also largely a creature of the private sector—so much so that business leaders sit on all the committees that shape ALEC's policy work.

The Independent Institute appears to be somewhat more autonomous. Its funding comes from a range of corporations, foundations and individuals. How beholden it is to a single one is hard to say. However, according to the *Times* article, Microsoft provided some 20 percent of the money that the Independent Institute raised during its last fiscal year, or over $200,000. In addition to the newspaper ads, Microsoft money helped pay for an Institute book that sought to systematically debunk the government's antitrust case.

How is it that Microsoft gets the same tax deduction for funding advertising on its own behalf, via the Independent Institute, that it gets for donations to the arts or other charities?

Often, the link between the agenda of conservative think tanks and corporate interests is sporadic, tied to specific policies and projects. For example, in the mid-1990s, the Progress and Freedom Foundation, an institute closely tied to then-House Speaker Newt Gingrich, launched a major project on restructuring the Food and Drug Administration. Financing this work was at least $400,000 in contributions from drug, biotechnology, and medical-device companies. These companies have also given hundreds of thousands of dollars, perhaps millions, to a range of other right-wing groups that launched an unprecedented attack on the FDA during the 1990s.

Elsewhere, CATO's huge Social Security privatization project has been underwritten by $2 million or more in corporate money, much of it from financial service companies which would directly benefit from privatization. Hedging their bets, these same financial companies have paid for privatization work at nearly a half dozen other conservative think tanks as well. The campaign against the 1997 Kyoto global warming treaty waged by right-wing think tanks has been another area where corporate America has heavily invested in right-wing policy groups that advance its interest. The Competitive Enterprise Institute has been a particularly aggressive advocate of the notion that global warming is a "theory not a fact." Since 1991, CEI's budget has grown from less than $1 million to over $4 million.

Perhaps no conservative policy group works more closely with private industry than Citizens for a Sound Economy. With a board composed almost entirely of corporate leaders, and most of its funding coming from business, CSE is essentially a think tank and advocacy organization for corporate America, regularly tailoring its policy campaigns to suit the needs of its donors. The Koch family, which owns an energy conglomerate and has major interests at stake in Congress, is one of CSE's largest contributors, funneling as much $1 million a year into CSE's coffers, both through Koch-controlled foundations and direct gifts. Contributions from numerous other corporations and industry groups have helped make CSE one of the fastest growing policy institutions in Washington. In 1996, CSE spent up to $5 million in a vigorous fight to roll back environmental legislation, concentrating fire on the EPA's Superfund, among other targets. More recently, CSE has joined the battle against the Kyoto treaty, helped lead the fight against the Microsoft anti-trust prosecution, and launched a number of other anti-regulatory campaigns in the areas of liability law, technology, and health care. Despite being funded almost exclusively by corporations, CSE has had surprising success at positioning itself as the grassroots voice of an anti-regulatory American public.

For corporations, bankrolling conservative policy groups offers benefits not found in spending on lobbying or political contributions. Most of all, money spent on think tanks helps to buy respect for the self-interested positions of private companies. In public policy debates, scholarly experts and data-filled reports can legitimize certain viewpoints far more effectively than lobbyists. Also, while lobbyists typically focus on influencing the legislative process, conservative think tanks target their marketing efforts on many different audiences of "influentials," as well as the public at large. In this way they can shape the national discussion on a given issue in a way that lobbyists cannot. The Independent Institute's work defending Microsoft, for example, has clearly been designed to shape elite opinion.

Another advantage of funding conservative think tanks is that these institutions are able to advocate policy views that have not yet won acceptance within mainstream politics. Whereas many legislators will only embrace certain policy positions when it has

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become safe to do so, conservative policy institutions actively work to reframe the terms of political debate. In recent years, these institutions have helped push a number of previously fringe ideas—such as privatizing Social Security or abolishing the federal welfare entitlement—into the mainstream of political debate.

And the price tag for this policy work can't be beat. All corporate contributions to conservative think tanks have the advantage of being tax-deductible. While giving money to politicians is a direct non-deductible expense, giving money to AEI or Heritage—non-profits that must be non-partisan by law—confers the same tax benefits as donations made to the United Way.

Depending upon one's ideological outlook, the growing link between the private sector and public policy organizations can be seen as either wholly innocuous or decidedly ominous. Defenders of these ties, including David Theroux, president of the Independent Institute, argue that corporate donations don't affect the work of think tanks. "The academic process we use is independent of the sources of revenue," Theroux told the *Times*. Undoubtedly, there is much truth to this claim. Given their world view, Theroux and his colleagues at the Independent Institute would probably be bashing the government prosecutors after Microsoft regardless of who gave them money. Ed Crane, president of CATO, was a dedicated libertarian long before he turned that institute into a leading mouthpiece for corporate America's deregulatory agenda. In this view, the corporate underwriting of conservative think tanks is merely a happy marriage between free-marketeers and self-interested donors, just as Irving Kristol had originally proposed. It is, moreover, perfectly legal given current tax laws. Microsoft may have egg on its face after the revelations regarding the Independent Institute, but it won't be facing more charges from the Justice Department.

At the same time, something is clearly wrong with this situation. First, while these donations are indeed legal, they raise troubling questions about the intent of tax laws governing the non-profit sector. How is it that Microsoft gets the same tax deduction for funding advertising on its own behalf, via the Independent Institute, that it gets for donations to the arts or other charities? It seems unlikely that this is what Congress and the Treasury Department had in mind when it crafted the non-profit tax exemption earlier in this century. A rethinking of these statutes is long overdue.

Second, whatever the David Therouxs and Ed Cranes of the world may say, it is naive to imagine that conservative think tanks aren't extremely beholden to their funders in the business world or to the corporate leaders on their boards. This is simply the way that the power of the purse works. Just as politicians can't ignore the demands of major donors if they want to survive, neither can institutions ignore their benefactors. (Needless to say, this article was not submitted to Microsoft-owned *Slate* magazine.)

Finally, and somewhat ironically, the growing sophistication with which private funding of policy organizations can now be used to shape public debate raises major questions about the long-term effectiveness of campaign finance reform. Real campaign finance reform would largely dam not one, but two of the rivers of money flowing into Americ's politics. If big-time corporate giving to politicians was prohibited, the clout of private sector lobbyists would rapidly fade, since these lobbyists could no longer demand access and favors in return for campaign contributions. Deprived of more direct outlets, much corporate money intended to influence politics would probably be re-channeled into research and advocacy organizations, further boosting the size of the conservative policy colossus. Certainly this possibility should be taken into account by the liberal champions of campaign finance reform.

But whether campaign finance reform happens or not, there is an urgent need for better counterweights to the corporate propaganda machines that call themselves public policy research organizations. The familiar lament, of course, is that the money isn't out there to beef up mainstream and liberal public policy groups like the Economic Policy Institute or the Center for Budget and Policy Priorities. This is a myth. In truth, the philanthropic resources available on the left easily equal those on the right. The problem is that for the past two decades, liberal and mainstream foundations like Ford, Rockefeller, and MacArthur have seriously under-funded public policy work. Instead, they have put most of their money "on the street," seeking to effect change at the community level.

Meanwhile, the right gambled heavily on a top-down strategy aimed at dominating the elite national political discussion. This, it is now clear, was the superior game plan. Belatedly, foundations on the left may be learning from their historic blunder. More money is flowing to policy work, and several new progressive think tanks have been founded in recent years, including the New America Foundation and the Florence Fund (the sponsors of TomPaine.com) in Washington, D.C., and PolicyLink in Oakland, California. Still, the left remains years—and tens of millions of dollars—away from achieving anything close to parity in the war of well-funded ideas. ●

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Turkey Farm

The government can't afford to keep ignoring the case for reforming civil service tenure

By Robert Maranto

Jim worked in a Defense Department office with an employee whose lack of productivity was matched only by his hostile attitude. Eventually, a good manager with the patience of Job, a mastery of detail to match, and the help of higher management took the time to record, day by day, the offender's record of non-work. After developing improvement plans for the employee and thoroughly documenting his failure to meet them for many months, the incompetent worker was actually fired. Then, the employee appealed before the Merit Systems Protection Board (MSPB). Two years into the appeal, when it looked as if the government would finally win, MSPB threw out the case when one of the team, moving to dismiss the employee, made an offhand remark that "even the people in his neighborhood association think he's unstable." The employee was reinstated with back pay. The agency went through the process all over again. By this time Jim had become boss. With the benefits of hindsight and existing records, the final try took only one more year of work!

Jim's predicament is faced by thousands of hard-working federal employees who must suffer a small number of lazy, incompetent, and, occasionally, dangerous co-workers. For the past three years, I taught high level federal managers at the Federal Executive Institute (FEI). Despite the stereotypes about bureaucrats, the vast majority of federal managers are capable people who take pride in their work. In dedication and smarts, the government bureaucrats I've worked with are more than a match for the college professors I taught alongside during 15 years in the academy. Unfortunately, these good people are thoroughly frustrated by a personnel system which forces them to work alongside (and get the same raises as) a small number of turkeys.

Robert Maranto *is a visiting scholar at the Curry School of Education at the University of Virginia and co-editor most recently of* School Choice in the Real World: Lessons from Arizona Charter Schools.

A Broken Personnel System

One of my games in the civil service was to ask a lunch table full of federal managers whether it was possible to fire low-performing employees. Save for the ever optimistic personnel specialists, the usual consensus was that it was possible, but hardly ever worth the effort. My informal focus groups mirrored public employee surveys.

While career civil servants and political appointees do not always see eye to eye, mail surveys I conducted in the mid-1990s found that each side did agree that the federal personnel system is broken, at least when it comes to separating non-performers. Eighty-eight percent of Clinton political appointees and 83 percent of career managers agreed that "personnel rules make it too difficult to fire personnel"—more than half of each group strongly agreed. This dovetails with the findings of University of Georgia political scientist Hal Rainey. Reviewing years of survey data, Rainey reports that "[r]oughly 90 percent of the public managers agreed that their organization's personnel rules make it hard to fire poor managers and hard to reward good managers with higher pay, while 90 percent of the business managers disagreed."

Since courts have ruled that federal employees have property rights in their jobs, they can only be terminated after lengthy due process and multiple venues of appeal. As a result, managers who decide to use official means to deal with turkeys may face the prospect of spending all their time managing that one person, to the detriment of the rest of the office. As one of my

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informants, a manager in a regional office, recalled of his one (eventually successful) effort to separate an employee who was both unproductive and breaking the law: "As the year went on, it took more and more of my time and became all consuming. I had to spend a lot of time explaining why I was doing this." Similarly, when asked if he had ever fired a non-performer, one manager told me that he had no intention of becoming like the one person in his agency who had fired several people and "wears that as a badge of honor, but he has no time to do his real work!"

Not only is firing a government employee time-consuming for managers, it is also dangerous. Managers who move against problem employees take serious risks. As Carolyn Ban details in *How Do Public Managers Manage?*, low performers facing personnel actions need not go gentle into that good night. They can make life difficult for months or years. They can take their case to the Merit Systems Protection Board (MSPB). They can file a grievance if they are covered by a union contract. Or if they belong to a protected class (by sex, race, age, or handicap), they can file an Equal Employment Opportunity complaint. Some bring their cases to the Office of the Special Counsel, claiming that they are being fired or otherwise harassed because they are whistle-blowers.

The problem of "low performing whistle-blowers" is particularly vexing for many federal managers, who, on the word of a single employee, can be subjected to prolonged investigations worthy of an independent counsel. Imagine having colleagues and subordinates questioned for months about whether you have ever used the long-distance line for personal calls or have padded the expense account. While the investigations go on, little work gets done and communication between co-workers stops, since everyone is afraid that a random remark could lead to a grand jury. Even when the boss is exonerated, a bad reputation can linger for years. And of course, if all else fails, the employee can simply sue his or her manager.

Not surprisingly, managers who have fired someone describe the process as traumatic. As one of the officials quoted above recalls, "here it is years later, the person has long since left the state, and I still don't want to talk about that sorry episode. It has an impact upon both the office and the family life of the individuals involved. It's something you only do once."

With the deck stacked against them, federal managers tend to avoid using official means of dealing with their turkeys. Phone surveys of managers by the U.S. Office of Personnel Management (OPM), reported in *Poor Performers in Government: A Quest for the True Story*, found that only 7.5 percent of the managers of low performing employees moved to reassign, demote, or remove them, and 77.8 percent of those managers reported that the efforts had no effect. While OPM gives a rough estimate of around 65,000 poor performers in government, from September 1997 to September 1998, only 159 federal employees were removed by performance based personnel actions, with another 1,693 removed for issues other than performance, such as breaking the law. Federal managers suffer low performers or act informally to improve their work and never use the federal personnel system, or only use it as a last resort.

Not infrequently, federal managers use two traditional means of shedding non-performers. By writing glowing letters of recommendation, a boss can get a turkey promoted to a different office. Fortunately, most civil servants are too ethical to use such tactics, and anyway, you can only do that once or twice before your credibility in the bureaucracy is shot. More typically, bosses place non-performers in "turkey farms," "dead pools," or (if it is a single person) "on the shelf." By quarantining non-performers, a good manager can save the rest of the organization from their influence.

The relative inability to act against a small number of poor performers has the effect of making that small number vexing to managers, who are people more used to solving problems than ignoring them. Managers don't like using turkey farms, but many feel they have no choice. At least, when downsizing comes, known turkeys make good candidates for reductions-in-force.

The Costs of Tenure

The sad part is that the vast majority of federal personnel do a good job. OPM's *Poor Performers in Government* report estimates that under 4 percent of federal civil servants are non-performers. One can quibble with OPM's methodology. I suspect that the real figure is a bit higher, but still, the poor performer problem is not nearly as bad as most Americans think. So why deal with it at all?

Aside from inefficiency, there are four huge costs of the federal government's inability to kick turkeys off the farm. First, non-performers themselves never get the message that they have to shape up or ship out and never get the chance for a new start. Instead, they often use the system to pursue old grudges for years. Second, good employees like Jim are forced to work alongside, do the work of, and often get the same raises as a small number of turkeys—a real morale killer.

Third, the low performance problem undermines

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the image and self-image of the bureaucracy. Business people have no tenure and look down on their government cousins who do. Military officers have an "up or out" promotion system—at key points in their careers officers either get promoted or get discharged. This makes the officer corps, at least at higher levels, a turkey-free zone, giving the brass a certain swagger in their dealings with their protected cousins in the civil service.

Most important, a tenured civil service undermines the legitimacy of the bureaucracy in the eyes of the public. After all, very few voters have tenure, so it is hard to tell citizens why their public servants cannot be fired. It is not surprising that college professors, public school teachers, and government bureaucrats have all come under attack in recent years. The very existence of tenure protects a small number of losers and leads the public to suspect the existence of a large number of low performers in government—a suspicion shared by many public managers.

Originally, the federal merit system was set up in 1884 to keep political parties from using government jobs to reward supporters. Patronage was seen as particularly onerous after President Garfield was assassinated by an insane "disappointed office seeker." Presumably, government would work better if run by technical experts than by political hacks. But on the federal level, at least, the spoils system got a bum rap. Even in the 19th century, a new president and Congress kept most of the incumbent civil servants in place, and only rarely replaced those with special expertise. Politicians have never relished the unpopular task of firing old employees to replace them with political supporters. As politicians have long lamented, each new political appointment provides 10 enemies who themselves wanted the job and one ingrate who got it. Besides, for perfectly sound electoral reasons, politicians cared (and still care) about the efficient management of government. As political scientist Michael Nelson has pointed out, even in the 19th century, more voters sent mail than delivered it. A party that replaces all the mail carriers disrupts service—not a good way to win re-election.

The temptation to "politicize" a bureaucracy in search of pork is even less apparent today. In the old days, political campaigns were won by precinct workers who might welcome a federal job. Today, politicians depend on big kickbacks from campaign contributors rather than small ones from government employees. More important, the greater size and expertise of modern government makes it less susceptible to political takeovers. In the old days, it may have made some sense for politicians to hire friends to deliver the mail, but imagine if a modern president hired precinct workers to run the Pentagon and NIH? To think that politicians would raid the civil service, you have to assume that they have an incredible capacity for both venality and stupidity, and the time to exercise both. In fact, modern presidents can hardly handle the 3,000 political appointments they have now. How could they place more? Sure, presidential political appointments have grown in number since 1960, but not nearly enough to match the growth in congressional staffs, interest groups, and reporters—the people appointees deal with on behalf of their agencies. Unless we downsize the rest of the Washington political class—something not likely to happen—we can't downsize political appointments.

Because of constant scrutiny by opponents, politicians in Washington do not have the sort of vast appointment powers they might have in some states and cities. Presidents are in fact very constrained in who they can appoint to government jobs and how many appointments they can make. *The Washington Post* test ("How will it look in *The Post*?") limits what they can do. Congressional scrutiny limits what they can do. Inter- and intra-party battles limit what they can do. Not surprisingly, the worst abuses under spoils were in states and localities with little political competition, not in a two-party, hyperpluralist Washington.

Rebuilding Public Service

To its credit, the Clinton administration has at least acknowledged the non-performer problem, and has begun to act on it. In accord with the *Poor Performer* study, OPM issued a CD-ROM guide to help managers, *Addressing and Resolving Poor Performance*. This is more than previous administrations dared try, but probably too little, too late. Not surprisingly, as the longtime guardian of the merit system, OPM's basic inclination is to save a system that should probably be buried. Real change in the merit system requires legislation to simplify procedures, followed by years of culture change inside government, along the lines of the National Performance Review's reforms of government procurement. The White House considered introducing a bill to overhaul the civil service earlier this year but dropped it in deference to public employee unions, an important constituency in the 2000 presidential primaries.

Real change is occurring on an ad hoc basis, however, in the agencies. Currently, the Federal Aviation Administration and Internal Revenue Service are creating their own alternatives to the traditional merit

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system. The Pentagon and Department of Housing and Urban Development have floated trial balloons proposing to replace most tenured civil servants with contractors and fixed-term employees who can be separated with relative ease—something that is happening incrementally all over government. Further, the rise of Performance Based Organizations, called for by Vice President Gore's *Reinventing Government* reports, is likely to erode tenure by tying organization budgets and staffing levels to results. Indeed, on all levels of government, the reinventing movement is in part a way to use market mechanisms to get around civil service tenure. Declining demands for an organization's outputs force reductions in force, which in turn push marginal performers out the door.

Many of the most exciting changes are happening in the states. More than 30 states now have serious proposals to reform their civil service systems, but Georgia has gone the farthest. In 1996 Georgia removed tenure from new employees in state agencies. A detailed evaluation of the Georgia experiment does not yet exist, but early work by political scientist Steve Condrey suggests that removing tenure has increased the ability of public managers to manage for accountability. A single Georgia state agency reported terminating nearly 200 employees for cause in the first 20 months after the law came into effect—with no reported challenges or cases of impropriety. Notably, the Georgia civil service reform was developed and pushed through the legislature not by anti-government Republicans but by then Governor Zell Miller, a pro-government New Democrat who sees ending tenure as one way to restore the legitimacy of government.

In short, for the first time in decades, real civil service reform is beginning to happen. For historic context, it took 20 years from 1864 to 1883 to build political support for the original federal merit system, and another 40 years to put it in place. It may take another decade to reform the federal merit system, but tenure now lacks public legitimacy, and the first steps at reform have already been taken. This excites those of us who want to turn "civil service" from an epithet for cumbersome personnel rules into a public service ethic. ●

The Washington Monthly

Journalism Award

NOVEMBER 1999

GREG JAFFE AND THOMAS RICKS

"Military Exploits"

The Wall Street Journal: 9/22 and 9/23

Ricks and Jaffe offer a trenchant analysis of how the Pentagon budget reflects the failure of the military to adapt to the post-Cold War world. With recruitment at an all-time low, the services are simultaneously undermanned and overstaffed. There are still far too many officers and bureaucrats, and too many technically-skilled men and women who spend their days counting pork chops, not working to defend our country. Meanwhile, the services continue to buy big-ticket armaments designed for Cold War battles instead of the more promising weapons that are necessary in smaller, Kosovo-style conflicts.

JAMES KITFIELD

"Command and Control the Messenger"

The National Journal: 9/11

Journalists and the military did not work together as a team during the Kosovo conflict. The Department of Defense was stingy with information and even less helpful than it was during the 1991 Persian Gulf war. Many journalists were in such a rush to publish information in the new 24-hour news cycle that stories ran which were helpful to Serbia. Kitfield explains some of the reasons why this happened, including the growing bridge-building gap between the military and the liberal journalistic community, very few of whom have ever served in the armed forces.

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Memo of the Month

DEPARTMENT OF HEALTH & HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Monday, August 16, 1999

Dear Assignment Editor/Reporter

As you are aware, for weeks the ongoing story of the drought in the greater Washington metropolitan area has understandably dominated local news coverage. While the media have explored many interesting facets surrounding this continuing story, little has been reported about the emotional stress caused by the deepening drought, or things the public can do to ease yet another source of tension in their every day lives.

As recently as this week, a waiter at a restaurant I frequent lamented that he had just bought a new home and was fearful he would lose the hundreds of dollars he had invested in new sod. "I'm stressed," he said. I suspect he is not alone. For many people, time spent watering their beloved lawns , washing their cars on the weekend, or taking that long hot shower at week's end are cherished moments that help stave off the tensions of life. So, what does one do, when things that were once a tension reliever are now yet another source of frustration? Are there activities or things people can do to reduce drought-related stress? Yes.

"For people under water restrictions either voluntary or mandated, there are things people can do to reduce the stress that this might bring. The general concept is to find a project that is both socially useful, as well as personally gratifying. Something that will help turn a negative into a positive experience. The idea is along the vein of the proverbial advice of making lemonade if someone gives you lemons," says Melvyn Haas, M.D. associate director, Medical Affairs, for the federal Center for Mental Health Services (CMHS). CMHS, an operating division with the U.S. Department of Health and Human, was tapped by Congress six years ago, to be the lead federal agency in overseeing the quality of mental health services nationwide.

Dr Haas offers a few examples of drought-related stress reduction activities,

- When brushing your teeth, you can tune in and focus more on the actual brushing, and not what was once the den of the continually flowing water in the back ground, which surprising can be a very subtle source of agitation.
- You can commune with nature by finding more water conservation methods for watering your plants. For example, by not exposing those plants to the intense rays of the sun during the day, but instead partially shading them, allows you to save water. At the same time, you are spending time communing with nature and learning how growth occurs.
- Another way to conserve water while simultaneously reducing stress, is to resist the reflexive action of automatically flushing the toilet if you awaken at night and there is only liquid waste. Simply wait and flush in the morning. Believe it or not, flushing itself can add to the stress of awakening in the middle of the night because of the noise element.

Sincerely,
Curtis R. Austin
Director
Office of External Liason
Center for Mental Health Services
Substance Abuse and Mental Health Services Administration
U.S. Department of Health and Human Services

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Guinea Pigs

When doctors experiment on their patients

By William Speed Weed

As the Nazi doctors knew well, there's a seductive inverse relationship in human experiments: the less you protect the particular humans you study, the more you can learn about humans in general. Systematic near-freezing of Jews in concentration camps taught the German Luftwaffe a lot about staving off hypothermia, which was crucial for their pilots when they had to ditch in the North Sea. But the Nazis weren't the only ones to understand this perverse dichotomy. Fifty years ago the U.S. government allowed black men with syphilis in Alabama to go untreated as part of the notorious Tuskegee experiments.

Even today, there are troublesome cases that keep regulators, doctors and ethicists up all night. A two-year old girl died recently when doctors forwent a known surgical cure for her bladder cancer and gave her an experimental drug instead. We still have lapses. And we still have the pull of experiment's inverse relationship. In all but the rarest of cases, we don't have mad scientists bent on discovery at the expense of human welfare anymore. So when little girls die in research, or when mentally ill patients are subjected to experimental harm, or when pregnant women don't know they are in studies, it is a systemic problem: one that points out inherent flaws both in the way the government is organized to protect citizens, and in the very nature of having some human beings poke, prod, cut and drug the rest of us.

In 1995, President Clinton wrote an executive order creating a National Bioethics Advisory Commission (NBAC), composed of doctors, lawyers, and ethicists from around the country. In renewing its mandate in 1997, he said that, "Science must respect the dignity of every American. We must never allow our citizens to be unwitting guinea pigs in scientific experiments." NBAC resolved that the president's goal would be met if every subject in a medical trial enjoyed two protections: informed consent and independent review of research. Informed consent means that patients know everything they need to know about what is going to happen to them, and that they willingly agree to submit to the research. Independent review means that researchers open their studies to outside observers (usually a committee of doctors and community members) so that a disinterested party can assess their ethics.

But commission members say the president's goal has not been met; Americans are not as safe as they could be. Federal protections do not cover all research. And the research the government does oversee is on shaky ground. Informing patients to get consent is difficult because average patients and average doctors speak very different languages. And independent review is compromised by mounting pressures for institutions to make money through medical discovery: A culture of "approve it now, ask questions later" pervades the research community. It may not be long before Americans lack up-front guarantees that what doctors do to them is needed, ethical, and benign. Earlier this year, the commission put it this way in a memo to the president, "The U.S. Government cannot know how many Americans currently are subjects in experiments, cannot influence how they have been recruited, cannot ensure that research subjects know and understand the risks they are undertaking, and cannot ascertain whether they have been harmed."

Why? First there is the problem of jurisdiction. As the law stands, the federal government oversees research it funds (the lion's share is an annual $12 billion in grants from the National Institutes of Health), and regulates research that will lead to products sold in interstate commerce (FDA trials). Some states, such as California, have laws about the ethical treatment of

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subjects; many do not. But that leaves a lot of research out of government's reach. Small institutions, such as fertility clinics, privately funded laboratories, small universities, and weight centers are essentially free to do whatever they want to patients who walk in and sign forms. Despite President Clinton's wish that no American be a guinea pig, those who want to lose weight, who need help conceiving, or who are simply pulled in by offers of money to join small studies are unprotected—and unprotectable—at least until the next wave of Federalism sweeps the country. Though subjects in these studies theoretically have redress through state tort laws, proving medical abuse is difficult. What seems to frustrate NBAC members most on this count is that they cannot discover how many Americans are subjects, abused or not, in such studies. Says one Bioethics Commissioner, Alta Charo, a lawyer at University of Wisconsin, Madison, "We are advocating for a solution in terms of a problem, but we don't have any idea whether the problem is big or small."

A culture of "approve it now, ask questions later" pervades the research community.

NBAC is not alone in this concern. Last year, the Inspector General of the Department of Health and Human Services (which includes NIH) issued a report saying that "[t]he long-established system for protecting human research subjects has vulnerabilities that threaten its effectiveness," and that given the new realities of the medical marketplace—genomics, stem cells, cloning, for-profit medicine, and the ever increasing drive to publish results—these vulnerabilities are a "serious national issue."

Both Duke University and a Veterans Affairs facility in Los Angeles had their research shut down this spring by NIH's oversight arm, the Office for Protection from Research Risks (OPRR). Neither institution was accused of actually harming patients. OPRR took the drastic measure of halting all research because each had violated a technical regulation for independent review (Duke didn't remove review board members that OPRR wanted removed; the V.A. approved studies without a review board quorum present.) In other words, the vulnerabilities of the system are apparent enough to the regulators that small slips require serious response. It is possible that the line between healthy research and freezing humans on blocks of ice is just that thin.

Here's how the current system works: the government, through OPRR, gets assurances from institutions that they will oversee the ethical treatment of subjects in the government's stead. The institution fulfills that assurance to OPRR by setting up institutional review boards (IRBs) to review research proposals before they begin. IRBs are composed mostly of doctors from the institution, but each must also have a non-affiliated community member. These committees examine the research proposals to make sure they are ethically designed. Once an IRB approves a study, the researcher is on his own to sign up subjects, pending informed consent, and conduct the study for up to a year, when the research must be re-approved by the IRB. During that year, the doctor is on his own. The government leaves it to the institution, the institution leaves it to the IRB, the IRB adjusts what it wants and then leaves it to the investigator. And the investigator leaves it to the subject, in so far as he can experiment only on willing and informed volunteers.

The vulnerabilities in our system of protecting subjects starts with the difficulty of ensuring that volunteers are willing and informed. How does an investigator tell an average person what her study entails? How do you sign up people for a gene therapy trial when most people don't know what genes are? Investigators try to pitch information on a sixth to eighth grade level. But, says Alta Charo of NBAC, "Americans are very poor at interpreting statistical information. They have binary attitudes. They have trouble with [assessing a] 3/10ths chance." According to the Inspector General's report, "Many individuals have signed up to participate in research trials with little understanding of the distinction between research and standard therapy." This is called the therapeutic misconception—my doctor is asking me to do something; it must be in order to treat me. The case of the man who was sure he was in therapy for his heart condition but was actually in an experiment—and died not knowing better—is a classic example.

Regulators fear this is a common problem because investigators often use their own patients in studies. And the confusion of roles may not be just the patient's. An investigator's focus in a trial is science, which requires filling the research protocol set ahead of time and not making individual adjustments for

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any one subject. If the investigator is also a subject's clinician, then, in a sense, that patient no longer has a doctor—someone who is looking out expressly for his interests and modulating care to suit his needs. The priorities are different enough, says James Childress, another NBAC commissioner, that the Hippocratic oath itself is in conflict for the clinician-investigator. Guiding the science that will help future patients and attending the needs of current subject-patients are different goals. "Those goals can come into conflict at times," says Childress. The inverse relationship between knowledge and care rears its head.

However, the number of actual abuses is not as high as it could be, given the power doctors have over generally willing subjects. NBAC commissioners, the Inspector General's report, and OPRR officials—despite their worries about systemic weaknesses—all credit the culture of the American medical profession with an outstanding sense of ethics. This century, we have added 26 years to our average life expectancy in this country—thanks in large part to medical interventions tested on human subjects and nutritional knowledge assayed in clinical trials. And the number of abuses is "vanishingly small" in the words of one regulator. The egalitarian nature of science assists in this good record. There are no lone wolves in medicine (weight-loss clinics aside). Just as science dictates that all findings be reviewed by the doubting eyes of peers, fifty years of medical tradition dictate that all proposed research undergo ethical screening by an institutional review board.

These review boards, made up mostly of doctors, do three things to protect human subjects. They assure that the proposed research is going to lead to worthwhile results—science must learn something by doing these things to humans. They shave risk off the research protocol so that human subjects are as unexposed to risk as possible, given what the investigator is trying to find out (heart surgery trials usually involve high risk; smoking cessation trials should not). And IRBs worry about informed consent. Review boards must have a non-doctor community representative on them. Their primary purpose is to help word the consent information to prevent therapeutic misconception and to ensure that the information includes all a subject needs to know to make an informed decision. As Alta Charo put it, transient diarrhea in a drug trial may not be medically significant to an investigator. But it is highly significant to potential subjects deciding whether to sign up.

A more serious example of the need for IRB review comes from Jonathan Moreno, a professor of ethics at the University of Virginia, who has just written a history of human subjects research called *Undue Risk*. A certain set of children have a condition that stunts their growth and impairs their cognitive ability. A respectable investigator submitted to his IRB a protocol to test whether a certain treatment would help these children grow. He was sure the regime would do nothing for their IQs. There was also a minimal cancer risk associated with the drugs. The researcher's informed consent packet left out the parts about cancer and not helping the IQ. He was not being devious, says Moreno; he was just so focused on the science of the study—would the treatment help growth?—that he neglected information crucial to the parents who might allow their children to participate. The study was not approved by the IRB until he reworked the information packet.

Moreno and other ethicists, as well as NBAC, and the Inspector General worry about what would happen if IRBs stopped being thoughtful. What if they became rubber-stamp approval boards, rather than deliberative bodies with the power to alter protocols? It is a change that regulators do not want to see. However well-meaning individual investigators are, the ethical sense of the medical community does not reside in each doctor individually any more than does scientific truth. One investigator's results are not scientific truth until others assess them and agree. The same is true for ethical treatment of human subjects. An investigator's judgment of proper treatment is always jeopardized by the inverse relationship rule. The temptation, however unconscious, to increase risk to gain return is ever-present. That's why outside eyes and independent adjustment are needed.

Nevertheless, IRBs are being squeezed for time and resources. The old, hallowed halls of academic research are rapidly changing as managed care and pharmaceutical companies bring marketplace pressures to bear on institutions. Administrators want more research done faster, for the prestige—and bottom line—of the institution.

A public affairs official for the V.A. contends that institutions all over the country cut corners. "Many of us feel under-appreciated," says Dr. David Gaba, the chair of one of Stanford University's two medical IRBs. "The work is unrelenting. It doesn't wax and wane." In fact, it just waxes. His IRB oversaw 1,350 protocols last year, meeting once a month for four hours. Members do spend time at home reading and reviewing, but the statutory work of meeting to amend and vote on research proposals is limited to just over two minutes per protocol on average. And the number of protocols increases 7 to 10 percent annually. Stanford—an institution that has not yet run into trouble with OPRR—is adding a third medical IRB to ease the burden on

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members, a move the Inspector General of Health and Human Services applauds. But many institutions are not adding IRBs, despite the mounting workload and pressures to approve protocols.

In addition to being "overworked and overwhelmed" as one ethicist put it, IRB members must endure what amounts to begrudging tolerance among researchers. "I've been doing research with human subjects for many years," says Dr. Marguerite Hays, a V.A. administrator and researcher. "I find it very frustrating to have to wait for a committee to tell me I can make a small change in protocol." That wait averages 37 days in academic settings—too long for the new market pace. Most doctors consider themselves ethically equal to IRB members and scientifically superior to them in their own sphere of study. For the members of the review boards, it is hard to ignore that attitude. "Every time you find something wrong, you are risking the irritation of your own colleagues at your institution—and you are giving yourself more work," says Alta Charo of NBAC.

Almost no one in the medical community argues that review boards are unnecessary. (For one thing, IRBs cover doctors' backs. Investigators who stick to IRB-approved protocols are exculpable, should ethical questions arise.) But no one is moving to make sitting on review boards any easier. In the words of one reviewer, "The need to cost out all your services is becoming more critical to the institution. Service on an IRB is not billable time." That is true for the institution and it is true for the IRB members, who are not generally paid for IRB work. David Gaba thinks IRB service "should be viewed as a positive thing in your [academic] promotion. But getting a couple of studies published is viewed as 100 times more important to your promotion."

The situation is only going to worsen as the pace of research increases, as the need for money and fame that come from research grows, and as the content of research becomes more ethically challenging. Genetics and stem cell research and privacy issues in studies such as AIDS trials are giving IRBs complex issues that need more time, not less.

So far, OPRR has been firm about shutting down research institutions that cut back on their IRBs. (OPRR's method is money—it holds the purse strings from the government and can freeze NIH-funded research immediately). But OPRR officer Tom Puglisi claims "OPRR is small for the task it has to do. We're overseeing 5,000 institutions. My staff consists of 15 people. It's [a system] of monitored self-regulation." OPRR makes very few site visits. Its ability to ensure the protection of human subjects in research relies on assurances from institutions that they will do the right thing. And the IRB is the crux of that assurance.

Because NIH is in the business of giving out money for clinical trials, OPRR is naturally reluctant to shut down research. The government wants doctors everywhere to experiment on human beings. That's how medicine is advanced, how discoveries are made, how you and I live longer. But against a backdrop of Nazi experiments and the Tuskegee syphilis trials, medicine must be careful. Despite her frustration with IRBs, Dr. Hays cautions doctors away from ethical hubris. She notes that certain EU countries have banned diagnostic tests involving radioactive tracers (common here, and harmless). "I think that this is a reaction that legislators have to what they see as abuses. We have to be very careful not only not to allow abuses, but not to allow the appearance of abuses. You may find that you are not allowed to do the research at all."

Research on fellow humans is a privilege, not a right. Both the flow of government cash and the willing trust of potential subjects could dry up if medical research institutions aren't careful. Without the safeguards of informed consent and robust independent review, research trips itself, says NBAC's James Childress. Abuse invites reactionary legislation—and, with it, the loss of the research privilege and its contribution to the greater good. "It is protection that provides the basis of trust that makes it possible for subjects to participate," he says. "What is right is what also turns out to be in the long run most effective." ●

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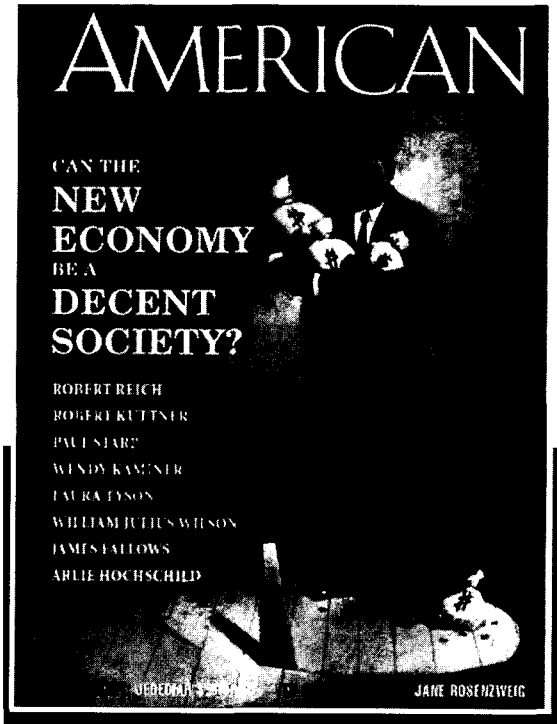

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Asleep On The Beat

Who would have thought that the Clinton administration would fail to enforce our environmental laws?

By Robert Worth

When Newt Gingrich and his fellow Republicans forced a temporary government shutdown in late 1995, Environmental Protection Agency Administrator Carol Browner scored points for the president by warning that "the environmental cop is not on the beat." Her warning worked. The image of government standing idly by while corporate polluters fouled the air and water was an effective scare tactic, and it was credited with helping to ward off deeper cuts in environmental spending.

Yet Browner's image was a little disingenuous, even at the time. As House Commerce Committee Chairman Tom Bliley observed less than a year later, the environmental cops appeared to have been "at the donut shop all along." In a press release, Bliley noted that "inspections of toxic waste sites are down, administrative actions against polluters are down, civil penalties are down, and so are criminal penalties."

Since then the environmental cops have strayed even farther from their beat, but no one in Congress—or anywhere else, for that matter—seems to care. Promoting a new philosophy of "compliance assistance," state and federal regulators now focus more on educating polluters than inspecting them or punishing them when they break the law. The result has been a precipitous nationwide drop in enforcement activity. Over the past five years inspections, referrals for civil or criminal prosecution, and sanctions—including fines—have dropped in almost every state. In some cases the drop has been more than fifty percent, and hazardous waste inspections have declined more than any other category. Although many of the worst offenses have occurred at the state level, the EPA has been remarkably lax in its oversight role. "Browner has massively disinvested in enforcement," says one former high-level EPA official.

Environmental officials are quick to respond that measuring inspections and fines doesn't tell you whether the air or water is getting any cleaner. After all, if everyone were to comply with the law, enforcement activity would drop to zero (inspections aside).

Unfortunately, that is not what has been happening. It's true that we've made some enormous strides in protecting the environment over the past 30 years. Catalytic converters have made cars far cleaner than they used to be, and removing the lead from gasoline has made all of us breathe easier. Many nearly extinct species have recovered, and forests have returned to barren areas throughout the country.

But these gains could be reversed if we don't do a better job of enforcing the law. Ground-level ozone, which causes a range of respiratory ailments, remains a serious health risk in most American cities, and in some areas it's getting worse. Many of the industrial sources that create the bulk of ozone-forming polllution are in violation of the law. According to a recently-released study of EPA records by the Environmental Working Group, almost 40 percent of major U.S. auto assembly, iron and steel, petroleum refining, pulp manufacturing, and metal smelting and refining industries were "significant violators" of the Clean Air Act between January 1997 and December 1998. Only one third of them have been fined, and the fines were almost always too small to have any deterrent effect. According to the report, EPA oversight of state enforcement is "virtually nonexistent."

Or consider water. In early September over 1,000 people drank contaminated water at a county fair in upstate New York. Two died and 65 others were hospitalized. If you think this couldn't happen to you, think again. A recent federal audit found that nearly 90 percent of all violations of the Safe Drinking Water Act go unreported. Some of those violations are harmless data-

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entry errors, but they also include potentially lethal problems such as contamination with pesticides and fecal coliform bacteria.

Meanwhile, 40 percent of U.S. waters are unsafe for fishing and swimming. Why? EPA studies have found that 40 to 50 percent of major water pollution sources are in significant non-compliance with the Clean Water Act. The true figure could be far worse, because, according to a report written by current and former environmental officials and published by Public Employees for Environmental Responsibility, the EPA does a stunningly poor job of monitoring water quality. The report concludes that the states are "free to manipulate numbers in order to falsely portray continuing progress in water quality when, in fact, what fragmentary reliable information exists often suggests the exact opposite."

Or consider what has happened to the coal mining industry during the Clinton-Gore years. Strip mining operations frequently contaminate drinking water, destroy topsoil and forests, poison workers, and damage houses. That's why they're governed by one of the strictest environmental laws on the books. Lately, however, that law hasn't meant much. In West Virginia, the second-largest coal-producing state, federal and state regulators made 470 inspections of mines in 1993, and found 514 violations. In 1998 they made 92 inspections, and found 67 violations. "These coal companies didn't just get religion after 1993," says Carolyn Johnson of the Citizens Coal Council. "The Clinton administration made a conscious decision to back off enforcement of the federal mining law."

The problem is worst at the state level, where 90 percent of all environmental enforcement is carried out. When the states do discover violations, according to Nikki Tinsley, EPA's Inspector General, they often assess penalties that are too small to offset the economic gain a polluter has reaped by breaking the law. Moreover, enforcement approaches vary wildly from state to state. This variability defeats the whole purpose of federal environmental laws, which were passed three decades ago to supply a common standard, so that poor states would not compete for the business of polluting industries in a "race to the bottom." That race is on again, according to many observers, and the EPA has done precious little to stop it. "The states don't like to enforce the law, and frankly EPA doesn't like to enforce the law either," says one former high-level EPA official.

EPA officials respond that their own (federal) enforcement program is in good health, and there is some evidence for that: fines collected from polluters and civil referrals to the Justice Department have grown in recent years. Yet in its larger role as a watchdog for the states, the agency has been far from vigilant. In 1998 the EPA's Inspector General released a series of reports blasting several states for failing to police clean air and water laws. The stakes got higher a few months ago when a reporter for the trade journal *Inside EPA* began publishing internal EPA documents (acquired through Freedom of Information Act requests) that showed a drop-off in enforcement in almost every state. Amazingly, not a single mainstream newspaper or magazine reported on this.

When the reports were published in May, the states angrily disputed them. There were, in fact, some glaringly obvious arithmetical errors and a number of inaccurate statistics. But if the data are faulty, the states are partly to blame, because they submit them in the first place. "It's not clear that anyone oversees or checks them," says one veteran EPA observer. "The databases are all old, and they don't communicate with each other." The feds are at fault too, because they're supposed to be supervising this process. Instead, they often create more problems by failing to add and tally the data accurately. In some cases the EPA's pollution categories don't match up with those of the states. Sometimes even the EPA's own categories don't match up from year to year. This smog of confusion is self-perpetuating, and it makes it very hard to hold anyone accountable for failures to apply the law.

Still, the EPA will admit that enforcement activity has declined, as will some state officials—off the record. That's when you start hearing about how the traditional "bean counting" approach to enforcement is obsolete, and how we need to emphasize helping businesses to comply, not policing them. As Virginia's Secretary of Natural Resources told Congress in 1997, "[t]he truth is that enforcement action means failure, not success." Businesses understand the need for a clean environment and want to abide by the law. What they need is trust and encouragement, not the big stick.

Carrots, Not Sticks

This approach, known as "compliance assistance," first emerged at the EPA in 1993 when Administrator Carol Browner approved a massive reorganization of EPA's enforcement office, renaming it the Office of Enforcement and Compliance Assistance. Initially, compliance assistance was viewed as a supplement to traditional "deterrence-oriented" enforcement tactics like inspections and fines. Environmental laws can be dauntingly complex, and many businesses—especially small ones—lack the money and know-how to comply. Putting more effort into training made sense.

Yet compliance assistance took on a new coloration

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after the Republicans swept Congress in 1994. Suddenly EPA was under ferocious attack, with Tom DeLay labeling it "the Gestapo of government" and Newt Gingrich calling it the enemy of small businesses across the country. Although the Republicans' fury subsided in '96, Browner was clearly under pressure to help the administration forge a political compromise with Congress and with the states, where a legion of newly-elected Republican governors was complaining about the costs of regulation.

"The states don't like to enforce the law, and frankly EPA doesn't like to enforce the law either," says one former high-ranking EPA official.

The substance of this compromise was a stronger emphasis on compliance assistance, at the expense of traditional enforcement. At EPA headquarters, for instance, the number of people doing enforcement work dropped from 340 in 1993 to 140 in 1997. The states, which embraced compliance assistance much more quickly and wholeheartedly, tended to make deeper cuts in enforcement budgets and staff, with predictable results.

Some environmental observers argue that Browner should have known better. "Compliance assistance has always been a code word for 'don't enforce the law,'" says one former EPA official. While that may be an overstatement, there's little doubt that the promoters of compliance assistance have exaggerated the rigidity and harshness of traditional enforcement. "Generally, [violations] have to be repeated and serious before they're even considered," says Clifford Rechtschaffen, an enforcement expert and professor at Golden Gate Law School. One extensive study of the Clean Water Act found that "the intent of the enforcement process" as it has traditionally been practiced is "not to punish violators but rather to coax them toward compliance."

This is not to say that helping companies comply isn't a good idea. It is telling, however, that when asked for a "compliance assistance" success story, or some indication that the new method works, EPA officials I spoke with were stumped. Finally I was referred to a program that educates drycleaners on how to properly dispose of the toxic chemicals they use. The federal EPA office based in New York City sought out over 200 drycleaners and even printed up instructions for them in Korean, just to make sure they understood what was required of them. But when I called the New York office to find out how the effort was going, I was told "Unfortunately, we've found that there's still only a very small number of drycleaners in compliance, and we've had to move back toward an enforcement approach."

Part of the problem with compliance assistance is that its successes are hard to measure. A 1998 GAO study found that there is no clear indication of how such efforts are working. When federal and state agencies do try to measure them, they use relatively meaningless indicators such as the number of brochures distributed, or names on a conference sign-in list. Talk about bean-counting.

Whatever the original goals of compliance assistance, there's no question that its "flexible" and "business-friendly" aspects are what have made it catch on like a cult in statehouses across the country in the past five years. Some states have supplemented the new approach with cabinet-level offices to run interference for businesses, helping them to cut deals or avoid penalties. Former Virginia Gov. George Allen pioneered this movement, modeling his own effort on former Vice President Dan Quayle's Council on Competitiveness, which became notorious during the Bush administration for its efforts to gut environmental laws. New York Gov. George Pataki has followed suit with the Governor's Office of Regulatory Reform. Technically, the office existed before, but only as a three-person ombudsman for small businesses. Now staffed by about thirty, the office was developed by Pataki's current budget director Bob King, and "they are in the driver's seat when it comes to environmental regulation," says one source in the New York state government. "They've had a major chilling effect on enforcement."

There's also no doubt that when states use compliance assistance without holding businesses accountable through inspections and a credible threat of enforcement, they are virtually inviting polluters to ignore the law. "There's been a massive shift in the approach to enforcement," says one New York state official. "The [enforcement] numbers have gone down. When you confront [agency officials] they say compliance is up. But there's no way to check. What I've heard from business is that no one is watching. They couldn't be happier."

Taking It Easy

An avalanche of anecdotal information suggests that in this new era, officials who prosecute the law vigorously are often pressured to cool it. If they don't, they face retaliation. Consider Captain Ronald Gatto, a cop in New York City's Department of Environmental Protection. You might suppose that Mayor Rudolph Giu-

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liani would be proud of Captain Gatto. After all, Gatto has a law enforcement record to match Mayor Rudy's. He has personally made 156 arrests for environmental crimes since 1990, with a 100 percent conviction rate. The DEP's police unit is tiny, and local environmentalists claim that Gatto is almost single-handedly responsible for protecting the network of reservoirs that supply the city's drinking water.

But instead of rewarding Gatto for his good work, Giuliani's administration has subjected him to a steady campaign of harassment, including denial of pay raises and promotions, and a series of probes of his conduct by the city's Department of Investigations, all of which came up with nothing. (In one instance the investigators broke into his office and stole his personal and police documents.) Gatto and his unit have been so starved of necessary equipment that he was forced to buy his own police telephone, fax machine, video camera and the dye tablets necessary for conducting wastewater investigations. In June he was reassigned away from enforcement activities and effectively demoted.

Giuliani's critics claim that his reluctance to police the watershed is a favor to upstate developers and politicians, who don't like to see environmental laws getting in the way of business, and whose support happens to be vital to Giuliani's upcoming Senate bid. Whatever the reasons, there's no doubt that the mayor is flirting with disaster. If its water supply deteriorates much further, the city will be forced under federal law to construct a filtration plant for $8 billion, at an annual operating cost of $300 million. By then, of course, Rudy will either be sitting in the Capitol or in his favorite lawn chair. Either way, he won't be mayor.

Stories like Gatto's may sound like something out of the movie "Chinatown" to the rest of us. But some regulators say they're run of the mill. Take Beverly Migliore, who had been running the Rhode Island Department of Environmental Management's hazardous waste program for eight years when the department was reorganized in the mid-1990s. "We were under lots of pressure to be more business-friendly," says Migliore. Suddenly, her new supervisor began finding fault with her decisions. "I'm not a strict, high-penalty close- 'em down kind of person," she says, but it soon became clear that her new supervisor "didn't believe in assessing penalties or even strongly worded statements." He began overriding her decisions, with the approval of the program director. In one case, a company called American Shipyard left drums full of solvents festering in a Newport shipyard for several years. Worried that the drums would erode and leak solvents into the bay, Migliore pressed her superiors to do something for two years. Finally she gave up and made a public statement. "Then I came back one afternoon and found my chief wheeling my computer out of my office into a closet." She is now suing the department under state whistleblower laws.

A few months ago the EPA's Inspector General filed a report that backs up Migliore's claims, calling the state's enforcement "inadequate" because "serious violations, such as leaking battery acid and drums of hazardous waste, did not receive formal enforcement actions. Thus, the health and protection of the state's population and environment was put at risk."

A series of recent federal audits suggests that Migliore's experience is common in state enforcement bureaucracies.

—In Florida, an Escambia county grand jury issued a 120-page report in late June condemning the state Department of Environmental Protection and demanding that its regional director be replaced. Pointing to extensive pollution of the bays, rivers, bayous and beaches of the Florida Panhandle, the report concluded that "[t]he district [DEP] director, and others acting on his behalf, ignored and concealed environmental violations against the sound advice of staff employees. . . . In several instances, he and or others acting in his behalf, disciplined or threatened to discipline DEP employees who tried to implement and enforce environmental laws."

—In Texas, where inspections and enforcement have dropped considerably in the past five years, regulators took an average of 651 days to complete enforcement actions for the ten significant violator cases reviewed by the EPA's Inspector General last year. This is six times longer than federal guidelines allow. Texas polluters often get off with no penalty at all. In the mid-1990s a French-owned uranium mining company injected radioactive water into the soil in Duval county. When the state environmental agency found out, the company offered to pay a large penalty. But the state, after initiating a criminal investigation, dropped it—and then failed to pursue any civil or administrative penalties.

—In Virginia, a scathing audit by the state's General Assembly in 1996 found that the state failed to take enforcement actions against persistent and serious violators. One investigator concluded that the state's regulators "work with industry [and] don't enforce the law."

—In Pennsylvania, EPA's Inspector General found in 1997 that state regulators routinely failed to report significant violators because they wanted to avoid "federal meddling." Understandably suspicious of the state's reports, auditors reviewed files for 270 of the state's 2,053 major polluters and found 64 significant violators the

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state had failed to report.

In most cases, the regulators aren't corrupt. They fail to enforce because their funding and staff have been cut, or in response to a demand for more "business-friendly" policies.

But sometimes it's an old-fashioned quid pro quo. In Connecticut, one of Gov. John Rowland's officials literally demanded cash from polluters in exchange for easy treatment by the DEC, according to a report written by a group of state employees and published by Public Employees for Environmental Responsibility. The employees describe this scandal, which is currently under federal investigation, as only one part of a campaign which has "systematically dismantled [the state's] enforcement program to the direct detriment of public health." One of the many examples they provide: A chemical manufacturer whose executives were also Rowland campaign contributors caused a toxic spill which killed 12,000 fish, but paid no fine, thanks to a back room deal with the governor's bag man.

State agencies aren't the only ones who cave in to polluters or their political flunkies. The EPA has ten regional offices spread throughout the country which oversee the states and have some enforcement responsibilities as well. One regional official told me her administrator "will reduce or eliminate our enforcement response after congressmen get in touch with him." This is a direct violation of EPA ethics rules—not to mention the public interest. But she claims that it happens in up to one quarter of the cases she oversees. The administrator has expressed interest in running for Congress and has no desire to alienate his future colleagues. "I had one case where we were told not to do a penalty," says the official. "They allowed congressional aides to show up at the settlement negotiations [on an enforcement case]. We were instructed to zero out the penalty." She adds that "most people are afraid to speak out because of reprisals."

Missing In Action

In theory, a regional EPA office can take its own enforcement action where the state has failed to do an adequate job. Yet "over-filing," as it's called, happens only a few times a year. The regions tend to use it only as a last resort, because it's likely to infuriate congressmen and state politicians. Furthermore, the courts have been known to frown on overfiling, viewing it as double jeopardy for the polluter in question (since they are subject to both state and regional actions). Eight years ago the regional EPA office in St. Louis discovered that a company called Harmon Electric, which manufactured electrical components for the railroad industry, had illegally dumped toxic solvents on its property over a period of several years. The solvents might easily have gotten into the groundwater, endangering the health of people living nearby. The state had done nothing, so the regional office investigated and sought a $2 million penalty against the company. Only then did the state file its own action, which did not include any penalty. In late 1994 an EPA administrative law judge set a penalty of $586,000. After several years of appeals, the Eighth Circuit Court of Appeals ruled in early September that the EPA had no right to overfile.

"This could have a massive chilling effect on enforcement," says one former EPA official who has followed the case. Supposing a company is caught dumping toxic waste on its property, threatening the health of thousands of people living nearby. The EPA might judge the company liable for millions of dollars in fines, based on the harm done and on similar cases. But suppose also that the state environmental commissioner owed a favor to the governor, who owed a favor to (or wanted to please) the company in question. The state could bring its own case, and demand a fine of only a few thousand dollars. If the Harmon precedent holds, the EPA could do nothing about it.

If a state is consistently refusing to apply the law, EPA does have the authority to revoke the state's authority to enforce federal laws such as the Clean Air and Water acts. But this is virtually an empty threat. It has never happened, and as one law review article puts it, "[t]he procedures for withdrawal of state programs would be suitable for the Nuremberg trials, and will be invoked only upon epochal occasions." Taking over a state program is enormously expensive, and as it is the EPA can barely afford to do its own meager share of enforcing environmental law.

Even the last resort in the face of failing government entities—citizen enforcement—has been weakened. Although citizen suits were envisioned as an important bulwark of enforcement in the major federal laws passed in the late '60s and early '70s, Congress barred them in 1987 in Clean Water Act cases where the state was "diligently prosecuting" the violation. Since then, the courts have tended to apply that standard to all environmental laws, and they have defined "diligent prosecution" to mean any kind of state action, including friendly negotiations.

Silent But Deadly

Why has the failure of enforcement received so little attention—not only from politicians and the press, but from the environmental community itself? For one thing, unlike signing an environmental bill into law,

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which makes a politician look like an instant hero, enforcing that law doesn't offer much payoff. By the time the number-crunchers have figured out whether he's been doing it or not, the average politician may be out of office. Besides, complying with environmental laws costs money and creates enemies. Major environmental groups are also dependent on grants and donations, and enforcement doesn't play well on the cocktail circuit.

The data smog that surrounds enforcement issues only makes matters worse. State and federal regulators routinely respond, when asked about declining enforcement rates, that the data can't be trusted. As if that were supposed to comfort us. An internal EPA report written earlier this year acknowledges that the agency's data on "significant non-compliers" with environmental law are so poor, thanks to mismatches between state and federal definitions and databases, that they are not reporting it for this year.

One thing that is clear, however, is that companies cannot be trusted to comply with environmental laws out of the goodness of their hearts. The data may not be perfect, but they do suggest that where enforcement is down, compliance with the law is down too. Politicians need to start recognizing that if they're going to "get tough" on crime, they had better get tough on environmental offenders as well.

Luckily, there's some evidence that tougher laws can make a difference. New Jersey's Clean Water Enforcement Act, passed in 1995, includes mandatory minimum penalties for serious violations and significant noncompliance, and requires that penalties recover the economic gain polluters have realized through noncompliance. In other words, the state has insisted (unlike most other states) on an enforcement program with teeth. So far, the warning appears to have worked: Clean Water Act violations have dropped 78 percent since 1992.

That should hardly be surprising. Street crime has dropped in the past five years, thanks to more vigorous policing of minor offenses. Maybe it's time we put the environmental cops back on the beat too.

Soft on Crime

The EPA and state environmental agencies aren't the only ones who don't enforce the law. The Justice Department shares with EPA the job of prosecuting environmental crimes. Greg Sasse, an assistant U.S. Attorney who is one of the most experienced environmental prosecutors in the country, claims that the DOJ under Clinton has dropped the ball. "Under Bush, environmental prosecutions were a top priority," he says. "At the first meeting of the criminal chiefs under Clinton, they announced a list of top priorities, and environment wasn't on it. They won't admit that publicly ... but the truth is, environment is no more a priority than guano smuggling. There just is no enforcement." The record confirms Sasse's impressions. According to a recent study published by Public Employees for Environmental Responsibility (PEER) and reviewed by a committee of assistant U.S. attorneys, prosecution of environmental crimes has fallen sharply during the Clinton administration. As another US attorney told PEER: "Under the Clinton administration, environmental crimes have only been a paper priority; there has been no real commitment of resources, expertise or organizational muscle."

Another arm of government that has slacked off is the Army Corps of Engineers. The Corps, which does large-scale civil engineering projects, is also tasked with helping to maintain the nation's wetlands. This is a critical environmental area, because wetlands serve as natural filters, helping to maintain our supply of clean water (as well as being a rich source of plant and animal life). Despite Clinton's proclaimed policy of "no net loss" of wetlands, the U.S. still loses 100,000 acres a year.

But the Corps has dropped its inspections by 40 percent since 1992, and many employees claim they are under heavy pressure to please developers and approve projects quickly. "Nationally, the Corps is backing off enforcement to the point where it's kind of in name only," says Maggie Shapiro, who resigned from the Corps in 1996 and who was once told by her supervisor "You do your job too well." She cites a recent example of the Corps's failure: In 1996, Virginia Gov. George Allen began attracting businesses to an area that is upstream of the Chickahominy Swamp, a Mecca for botanists and wildlife observers. The planned development, which has now become a multi-project industrial park, posed a threat to at least one endangered plant species known as the Swamp Pink. The Fish and Wildlife Service recommended a formal consultation. But the Corps simply ignored them, without doing any consultation or research of its own. "I have never in my life seen the documented presence of an endangered species ignored by the Corps," says Shapiro. "It's an example where big business, lots of money and power politics has overridden the Corps's enforcement of its own regulations." ***—RW***

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Was It Worth It?

A new book shatters many myths about Vietnam, but misses the larger point

By Gregg Easterbrook

"THE VIETNAM WAR WAS A JUST, CONSTITUTIONAL and necessary proxy war that was waged by methods that were often counterproductive and sometimes arguably immoral. The war had to be fought in order to preserve the military and diplomatic credibility of the United States in the Cold War, but when its costs grew excessive the war had to be forfeited in order to preserve the political consensus within the United States in favor of the Cold War. The Vietnam War was neither a mistake nor a betrayal nor a crime. It was a military defeat."

VIETNAM: The Necessary War
By Michael Lind
Free Press, $25

So reads the final paragraph of *Vietnam: the Necessary War*, by the journalist and political analyst Michael Lind, who is the Washington editor of *Harper's* and author of *Up from Conservatism*. Coming at a time when the respectable lunatic Pat Buchanan is declaring that the United States was wrong to fight World War II, an argument that the country was right to fight in Vietnam is a refreshing switch to intellectual seriousness. Lind's aim is not to glorify the conflict—he calls it "a horrible debacle"—but to assign the Vietnam War the status of historical inevitability, "less like a tragic error than a battle that could hardly be avoided." Buchanan believes the world would be a better place if the Nazis ran Europe; Michael Lind believes the world is a better place because the United States fought and lost in Southeast Asia. At least Lind has a chance of making his case.

Page-by-page, this book stomps on toes. It seems likely to cause excruciating frenzies of staged partisan indignity regarding precise usage of loaded words; indeed, the author may have hoped to promote himself by goading people into attacking him. Nevertheless, in many respects, Lind's book is a masterwork of factual presentation and analytical argument. Its pages are as densely packed with well-researched factual material, and as tightly reasoned, as those of any book I have ever encountered. Lind has done a brilliant job of assimilating and dissecting the events surrounding Vietnam: and even if he worked almost exclusively from other books and documents, as seems to be the case, his was encyclopedic labor. As an accomplishment of thinking and writing, *Vietnam: the Necessary War* is terrific. Few books can exceed its power-to-weight ratio.

Having stated the merit of Lind's book, I will use the rest of this space to argue with its faults; fair enough, since Lind employs most of his page length to criticize others. Lind's most basic argument is that Vietnam was fought to sustain American credibility in the Cold War: "what was at stake for the United States was its credibility as the dominant global military power." Credibility as the highest of superpower goals is repeated continuously throughout *Vietnam: the Necessary War*. Lind acknowledges there was no direct U.S. security stake in Southeast Asia; that the South Vietnamese government was baneful; that many innocents died, at times by our hand. But had the war not been fought, he reasons, Maoist China and the old Politburo (how pleasant to type those words together) would have become much more aggressive on the world stage, leading to greater woes, including more war and more nations falling to Communist dictatorship. In this sense *Vietnam:*

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the Necessary War accepts the logic of the domino theory, long sneered at by the left, but rightly revived by Lind as a reasonable fear. Today, with Communism defeated or in retreat nearly everywhere, it is easy to scoff at the rack of dominos. In the '60s, with Communism controlling half the world and ascendant in many developing nations, the playing board was very different.

To structure his case, Lind dismisses as a series of "myths" practically everything everyone has believed about Vietnam. He shows, for example, that the bombing of the North was not barbarous—targeters went to great lengths to avoid noncombatant areas, releasing huge tonnages but killing far fewer civilians than did bombing of previous wars. Then, lest you think he's pro-military, Lind spends many pages establishing that the Pentagon was not "prevented from winning," that, if anything, too much firepower was used, and that LBJ was right to restrain the generals in order to avoid escalating the conflict into a second war with China. On the too-much-force point, Lind concludes that the intensive use of artillery, helicopter gunships and air strikes in the South—the majority of Vietnam bombs fell on the South—served mainly to devastate the place we were supposed to be protecting, causing many Vietnamese to dread us. Lind's verdict is that the Pentagon, not the politicians, caused the military disappointments of Vietnam, mainly because of careerism and poor judgment by the officers corps. U.S. forces employed a massed-firepower attrition strategy in the war's first phase, when the enemy had few conventional formations to shoot at; then shifted to a counter-guerrilla strategy in the second phase, just as the North Vietnamese began to field conventional armored formations. Overall, Lind thinks, America fought bravely but poorly, and the Pentagon has since used the excuse that "our hands were tied" simply to divert attention from its internal failings.

Next Lind punctures the left's dearly held view that Ho Chi Minh and his cadres were patriots motivated by the desire to expel foreigners, forced into the arms of Mao and Moscow when the United States misperceived them. This canard seems to acquire more stature with each passing year, along with its corollary that if only we had befriended Ho, he would have warmed to our side and blossomed into a Jeffersonian democrat. Lind skillfully shows this to be wishful thinking. Ho, like Mao, was heartlessly brutal, executing at least 15,000 rivals during internecine power struggles; his associates would torture and execute thousands more after the fall of Saigon, going so far as to persecute even former Viet Cong, whom northern Communists considered sociological inferiors. Lind is right to point out that if the leader of any U.S.-backed nation had executed 15,000 rivals, American intellectuals would have flipped out; but, when Ho raised the knife for slaughter, Frances Fitzgerald, Norman Mailer, Tom Wicker and others on the New York chardonnay-and-trust-fund circuit jumped up to apologize. Further, if Ho's true goal was the patriotic expulsion of foreigners, why did he soak Vietnamese culture in adoration of Lenin, Mao and Stalin? These were all foreign figures whose orthodoxies inflicted on his countrymen a lot more harm than the French.

Vietnam: the Necessary War sets up and knocks down so many "myths" that readers will have to discover the full inventory for themselves. Although Lind's myth-cratering often seems correct to me, he fails to acknowledge that his insights work much better in hindsight. He criticizes others for employing what he calls "retroactive determinism," hindsight-based argument that something had to happen because it did. But almost all of his book turns on the same kind of premise—that great-powers combat in Indochina "had" to occur—a notion that conveniently can never be disproved. In one misuse of hindsight, Lind disparages those who, in the '60s, thought the United States should have made overtures to Mao, his principal argument being that '60s history shows Mao never wavered from destructiveness. That's true, but then we didn't make overtures, so how can we know what might have turned out differently? Moreover, Lind slides past the fact that as soon as the United States did make an overture, in the form of the Nixon Administration's China opening, things got better, if only slightly so.

Though in the main a disciplined and judicious book, *Vietnam: the Necessary War* has its moments. A small, nutty point is that Lind states some statistics in "lakhs," which in Brit-Indian vernacular means "a multiple of 100,000." This is at best pretension, at worst unreadable. More telling is his mixed treatment of the '60s establishment left.

Lind rightly impales those who romanticized Ho or pushed their war opposition to the point of anti-Americanism. In this regard he especially singles out Fitzgerald's *Fire in the Lake*, which won the 1973 Pulitzer Prize and whose premise was that selfless Northern rebels would cleanse and purify a depraved South Vietnam. Imagine telling those hanging off the helicopter rails in Saigon in 1975, desperate to

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escape the advance of the butchers and brainwashers, that Communism was a noble force. Considering the mass murder and depredation that Communism brought to Southeast Asia, *Fire in the Lake* now looks like one of the most wrongheaded books of all time, and the adoration with which this work was received by the literati does cause you to wonder about the underlying mental health of some American elites.

But as Lind quotes one foolish-sounding '60s statement about Vietnam after another, he again awards himself the benefits of hindsight. Many of the statements he cites, such as the former bomber pilot George McGovern's misguided December 1972 assertion that the bombing of Hanoi was "the most murderous aerial bombardment in the history of the world," were made while events were in progress and nobody knew for sure what was going on. Of course if McGovern had 25 years to think about it, which is in effect Lind's own condition given the histories and statistics on his desk as he wrote, he would have said something different. *Vietnam: the Necessary War* was being committed to pages as the Kosovo air assault began, and of it Lind writes, "Even as NATO bombs and missiles rained with little effect on Yugoslavia ... ." That's what everybody was saying when Lind wrote, and we now know it's completely wrong. Lind's book surely contains many statements that will seem idiotic in the light of knowledge not yet available. He should temper his opprobrium for other's errors accordingly.

Of equal importance, when Lind derides antiwar sentiment of the '60s, in most cases he cites only its worst lights—people like Mailer who were walking self-satires. *Vietnam: the Necessary War* affords only passing recognition that there was a sensible, patriotic antiwar wing that acknowledged the awfulness of Communism and endorsed America's need to stand strong before Moscow, but simply considered the Vietnam War wrong.

A strange derailment in Lind's argument occurs when he pauses for an entire chapter to belabor Whig opposition to the Mexican War, and from this launch pad attempts to establish the concept of a "Greater New England" factor in American political history. It's true and worth showing, as Lind does, that the Democratic Party became progressively more anti-war as '60s civil rights campaigns caused its electoral base to shift away from the traditionally martial south and toward the traditionally war-skeptical northeast. But in order to turn this observation into a new law of political dynamics, Lind is forced to claim that during this century's domestic debates regarding whether to engage in foreign wars, everyone from Pennsylvania pacifists to conservative isolationists hailing from California, Colorado, Idaho, Illinois, Nebraska, Ohio, Oregon and Wisconsin, "were in reality Greater New England progressives." California part of New England! That's some stretch. Greater New England, after Lind is finished constructing it, comprises about two-thirds of the country, and seems about as useful a classification system as saying that any city that consumes a lot of chocolate "in reality" belongs to Greater Belgium.

Though in the end Lind may be right to maintain that the Vietnam War deserves greater standing than it now enjoys in American public thought, perhaps ultimately to be seen as a noble failure, I left his book troubled by two concerns. The first is just how much of the "geopolitics" Lind extols is driven by decisions of state, as he contends, and how much by larger trends. Consider that Lind takes the be-a-man tack of calling Vietnam a "defeat," a word Americans are raised never to allow to pass their lips. But China, Vietnamese Communism and many other players were defeated on the paddies as well. Ultimately, Lind concludes, "the only clear winner of the Vietnam War was the Soviet Union," because it invested relatively little, while seeing the United States driven to "humiliation and paralysis." Yet in the year of the collapse of Saigon, the former Soviet Union signed the Helsinki Accords, which planted the seeds of the dissolution of the Kremlin. Within a few years Moscow would initiate its own Vietnam, the Afghan war, then be spent into the ground by the Reagan arms race, and not long after that, collapse completely. If the United States suffered geopolitical "humiliation and paralysis" because of Vietnam, this condition sure didn't last long—it didn't even last through the Carter years, for while Carter may have been tentative in his dealings with Moscow, he was dynamic as regards the economy, enacting the deregulation legislation that made the '80s boom and defense buildup possible. Meanwhile from the standpoint of geopolitics, everything turned bad for Moscow pretty much from the day it emerged as the "victor" in Vietnam. All this makes you wonder just how much geopolitical thinking is worth.

Most troubling about *Vietnam: the Necessary War* is Lind's premise that credibility is, in and of itself, worth human lives. There's no doubt a strong United States is good for the world, and no doubt those

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Americans who fell in Vietnam did not do so in vain, for the world they left us is one in which freedom has tyranny on the run. But Lind is strangely antiseptic when he talks about "credibility," adopting the ruling-class view that it's fine for someone else to die. A striking, almost weird percentage of the book is devoted to Lind's contention that the United States is too timid about casualties, whether other country's civilians or its own soldiers. Lind approvingly quotes Stalin (several times!) as saying America lacks the stomach for expending its soldiers' lives, and spends too much time "weeping." In his own voice, Lind repeatedly complains that military deaths here and there are nothing in the grand scheme of things, yet these small matters make the United States hesitant to flex its power. These soft, spoiled Americans don't want to die for credibility!

At one level, this argument is simply false. During the period since World War II, the United States has employed military power more often, and more decisively, than any nation on Earth. Three major wars, in Korea, Vietnam and the Gulf, have been fought with great valor and determination, despite no direct threat to American homes or families. Other live-ammo military actions have occurred in Bosnia, the Dominican Republic, the Iranian desert, above Iraq, Lebanon, Libya, Panama, Serbia, Somalia and elsewhere. The former Soviet Union and China, nations where, Lind almost admiringly writes, leaders think nothing of wasting whole divisions, have not attempted military actions anywhere close to the ambitious level of the United States, let alone succeeded in almost every case. No nation has ever spread its forces around the globe like the United States; no nation has ever fought harder or more often for the cause of freedom. If America works so hard to spare civilians and dreads the thought of shedding its soldiers' blood, these are reasons we are so strong, not pantywaist weaknesses as Lind contends.

Perhaps it is agreeable to announce that lives should be traded for credibility when you know you personally will be exempt. Lind has never served, yet he not only repeatedly tell us casualties are nothing much to be concerned with, he pronounces that soldiers are pampered. Provisioning of troops in Vietnam cost too much, Lind scoffs. "The logistical requirements of United States forces would have been greatly reduced by a strategy that compelled American soldiers to live in small units among villages, rather than in bases like those stateside," he writes. Pretty easy to say when you're sitting in an air-conditioned office with a latte and a chicken Caesar wrap, with no chance that your situation will change. Lind seems to think of Vietnam bases as places of indulgence. The thing soldiers liked about them is that they were defended and had hospitals.

Lind goes so far as to object to honoring war dead, saying that in the future, American soldiers should be "thought of as the equivalent of firemen. We have parades for firemen now and then, but do not have a parade every time they put out a fire." The fighting men and women who will die for credibility in years to come won't even be memorialized; presumably the elites will be too busy e-trading. One of the worst notions of world history is that it's fine for soldiers to go off and die, so long as no one from the comfortable classes is affected. In *Vietnam: the Necessary War*, Michael Lind throws his arms around this idea enthusiastically. ●

The Sound Bite Society

Television and the American Mind

by Jeffrey Scheuer

"...brilliant....explores the various consequences of television's inherent propensity to simplify complex ideas."
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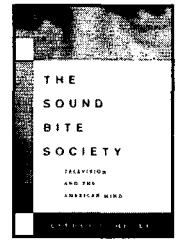

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Free Love vs. Just Say No

Are liberals really bitten by sound bites?

By James Fallows

THE BEST KIND OF NON-FICTION BOOK IS the one that leaves you thinking: "Of course! That's right! Now I understand how it all works." But since those are rare, it's good that there is also value in the book that leaves you unconvinced but makes you actually stop to think about why you disagree.

THE SOUND BITE SOCIETY: Television and the American Mind
By Jeffrey Scheuer
Four Walls Eight Windows Publishers, $23.95

The Sound Bite Society is valuable in this second way. To me, its central argument just does not hold up. (Even one of the book jacket blurbs, by Victor Navasky of *The Nation*, says "I'm not sure I buy" the main thesis of the book.) But I found thinking about the holes in—and implications of—Jeffrey Scheuer's argument more stimulating and enjoyable than simply nodding along with a number of other books. And in making his case he offers a number of incidental insights that are original and ring true.

Scheuer's intention is to connect two aspects of modern life that, taken one by one, are beyond dispute. One is television's increasing dominance of culture in general and political discourse in particular. Compared to a generation ago, politicians spend more time thinking about TV coverage; journalism is more talk- and TV-centric; TV ads matter more; and the general tone of political discussion is both choppier (because of ever shorter sound-bites) and more visually-oriented. The other trend is the modern conservative ascendancy, from Ronald Reagan's election in 1980 through the Republican victory in the House of Representatives in 1994—or as Scheuer puts it on the first page of the book, "the nearly complete collapse of American liberalism in the face of a resurgent New Right."

The assertion of sweeping conservative victory is what would leave some right-wingers unconvinced by Scheuer's book. After all, they would say, they've permanently lost the abortion battle; they've had to stomach a Democrat in the White House through the 1990s; they feel under siege on a variety of cultural fronts. But what Scheuer means by a conservative victory is the clear shift-to-the-right of the center of political argument. Everyone complains about today's health care system, but almost no one dares talk about the kind of government-run, single-payer approach prevalent in the rest of the world. Clinton has stayed in office largely through the Dick Morris strategy of pre-empting the most attractive parts of the Republican agenda. The labor movement is dead; "liberal" is still an embarrassing term; and there is surprisingly little political grumbling about today's Gilded Age-style economic inequalities.

The heart of Scheuer's book is his claim that these two trends—rise of TV, decline of the left—didn't just happen to occur at the same time. Instead, he argues that one caused the other. The more that political argument shifted to TV, the more it became simplified. And the more simplistic it became, the more the rules of argument favored the right wing.

Explaining exactly why this should be so is what takes Scheuer several hundred pages (of sometimes dense prose) in the book, and I won't try to sum it all up here. An important part of his contention is that something more than surface level political slogans—"No New Taxes!" "Bridge to the 21st Century"—is involved in the simplification contest. At a deeper level than that, Scheuer contends, the fundamental beliefs of conservatives are simpler than those of liberals.

To simplify his argument (hmm, let's call it "distilling" instead), if the conservative credo revolves around (a) every man for himself, and (b) people being individually responsible for their success or failure, rather than being part of a social network, then those ideas are easier for the mind to grasp than their liberal counterparts. Conservatives have an easy time arguing that regulation and government are per se

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bad, and that business, the military, and individual enterprise are always and everywhere good. Liberals, meanwhile, are left tugging their forelocks while trying to explain that the right balance between government and enterprise makes them both stronger, that the military is crucial but must be properly controlled, that human satisfaction involves the combination of individual and collective goals, and on and on in terms that TV makes seem mushy and ridiculous.

When Scheuer is talking about TV, he's completely convincing, and capable of coming up with new insights into an often-explored topic. For instance, he explains how hard it is for TV news to show that one event is connected to another, in either a cause-and-effect or a historical sense, since every bit of news appears as its own random narrative. "What is simple, fragmented, short-term, or localized plays well on the tube; what is compound, integrated, long-term, or general does not." The point sounds familiar but he adds many new wrinkles.

But when it comes to his larger "television causes conservatism" thesis, I have three reasons for resisting.

First, as a procedural matter, it's always worth being suspicious of a claim that one's own side in a debate is hindered by some weird unfairness of the rules. (At the U.S. Open tennis tournament this summer, Yevgeny Kafelnikov took this approach in explaining why he'd been upset by the humbly-ranked Cedric Pioline in a big match: "It was very windy out there.") Conservatives would seem to have an easier time than liberals rolling out reasons why the rules of debate are stacked against them. Clinton is unnaturally gifted at TV-style emotive argument (as Reagan was before); the "media establishment" is a bunch of limousine liberals; the White House press corps always votes Democratic, and so on. When you have an ugly candidate, you complain that society places too much stress on looks.

Second, at the tactical level of policy argument, the stress on simplicity seems as much a headache for the right wing as for the left. (Granted, Scheuer is not talking about this tactical level, but it affects the plausibility of his larger case for the decline of the left.) Yes, some left-wing arguments are easier to ridicule than to explain within the confines of a bumper sticker or an eight-second sound bite. Affirmative action would be number one on the list.

But it's not as if it's always so easy for the conservatives. The next time there's a school shooting, it will be the right wingers and the NRA saying: "Wait a minute, don't rush to conclusions. The problem is not really the truck load of Uzis that the teenagers took into the building, it's much more complicated than that." Or the next time a corporation lays off 10,000 workers, while increasing dividends and paying a $5 million bonus to its CEO, someone like Michael Moore will have a much "simpler" argument to make—that this is wrong—than will the conservatives saying that this is really the best opportunity for everyone in the long run. The entire fuel for Ayn Rand's writing, and for her continued popularity, is the idea that in the normal rush of "simple" thinking, people don't see that selfishness is actually altruism, greed is actually generosity, etc. One hundred and fifty years ago, right-wingers were stuck trying to argue that the "simple" view of equal human dignity was not really right, when matched against all the complex nuances of the Southern plantation economy, states' rights, the "peculiar institution" of slavery, and so on. Thirty years ago, the simple argument was "Make love not war." The other side was left trying to explain its way out of the principle that you sometimes had to "destroy the village to save it."

Third, we have Scheuer's deepest contention, which may provoke the most useful self-examination by liberals. This, again, is his idea that in truly fundamental ways liberalism is more complicated than conservatism, and that therefore it is doomed as modern discourse becomes simpler and snappier.

Is it true that the basic liberal ideas—that people live for more than their own selves, and that they're embedded in a social network rather than existing as atoms—are too complicated to convey? The best counter-evidence would be the moments when simple American imagery has gotten across these liberal concepts. Yes, it's true that the most familiar illustrations are all out of date: Frank Capra movies in general, World War II foxhole images of shared sacrifice. But the currently best-known of Capra's movies, "It's a Wonderful Life," qualifies as contemporary, since it is run wall to wall each Christmas season. And other figures of the TV age, from Mario Cuomo in his prime to Stephen Spielberg in "Saving Private Ryan," provided very similar, modern, "liberal" images of human connection.

Although I leave the book doubting Scheuer's contention that liberalism is inherently more complex than conservatism, I'm glad to have been forced to think about it. I've thought even about that great store of convenient simple aphorisms, the Bible. The conservatives can turn to it for their simple message: An eye for an eye. And the liberals can come back with: the Golden Rule. ●

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Lewis on Clark

An intimate look at "the detonator"

By Elise Ackerman

THE AUTHOR'S MOTHER WARNED JIM Clark not to talk to her son, and when the storied entrepreneur finally saw the galley for *The New New Thing*, he wished he had listened to her. Michael Lewis had told Clark that he was writing about Silicon Valley. That was true, strictly speaking. It would have been more accurate, however, if Lewis had said he was writing about Silicon Valley as reflected through the remarkable life and singular times of Clark—a 55-year-old digital anarchist cum computer cowboy with a proclivity for creating software programs that blew up the U.S. economy. But this admission might have prompted Clark to limit the hospitality he extended toward the wickedly humorous author, whose kiss-and-tell account of his days as a bond salesman, the best-selling "Liar's Poker", exposed the underbelly of Wall Street. Instead, Clark welcomed Lewis into his life, allowing him to rummage through unopened boxes of personal effects and inviting him on a transatlantic voyage.

THE NEW NEW THING
By Michael Lewis
W.W. Norton, $25.99

Lewis spent 18 months observing Clark's efforts to build the world's largest single-mast sailboat and to construct an Internet company, called Healtheon, that would revolutionize the American health care industry. At some point, Clark learned that Lewis was, in fact, writing a book about him. "I thought, well, that's strange, I didn't know that," Clark recalls. He asked Lewis about it. "He said, 'It's really about other things, other than you. But you are the central character.'" In retrospect, that remark should have tipped Clark off about Lewis' intentions. Nevertheless, this most prescient of engineers, credited by many for starting the Internet stampede with the development of the Netscape browser, did not foresee how Lewis would describe the role he played in the Silicon Valley funhouse. That, perhaps, is to Clark's credit.

"I basically was kind of shocked when I read it," Clark remembers. "He allowed me to read it—not to edit it—because I was only allowed to change one word inaccuracies, like a name." Though the book is a spritely read at only 274 pages, it left Clark exhausted. "My first impulse was: I've got to hurry up and hire a CEO for MyCFO [his latest multibillion-dollar venture] because after this book comes out I won't be able to hire anybody."

If Lewis had not written such a wonderful book, we might be tempted to hold this small act of deception against him. But even Clark—a man whose list of past hurts is meticulously kept and spectacularly avenged—forgives the author. This is not because Lewis' portrait is flattering, balanced, or well-rounded. But it is immensely entertaining and stunningly insightful. More parable than profile, Lewis sets out to explain how techno-geeks like Clark irrevocably transformed the economy and in the process accumulated fantastic wealth. In the hands of a lesser writer, the topic would have been soporific. At its heart, after all, are the tough sinews of software code connected to the dry bones of servers and silicon wafers. However, Lewis' book is not about the physical attributes of the digital revolution, it is about its soul.

Why did Lewis focus on Jim Clark rather than Bill Gates or Andrew Grove or any of hundreds of lesser-known cyber-caudillos? On one hand, it can be argued that few have Clark's track record—he has created four multibillion dollar companies, three of which are public. Clark is either uncannily lucky or preternaturally perceptive. Still, one suspects that the reason Lewis chose Clark is less for his accomplishments than for his character. To explore Silicon Valley's animating force, Lewis needed someone whose feelings and emotions were accessible, not guarded behind a wall of insecurity and fear. Why do people like Clark push for radical change when so many of us are content with the way things are? There are no easy answers, but Clark's complicated—and transparent—psyche provides some clues.

"Clark had one of these faces that virtually

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screamed what he was feeling," Lewis writes. "The pucker was its way of letting you know he was irritated ... His face would redden, and his mouth would twist up into a mouth-of-the-volcano pucker as if it were trying to suppress the inevitable lava. The mood in the air once his mouth went into its pucker was a bit like the feeling you might get when, climbing what you thought was a mountain, you looked up and saw smoke billowing from the top. When you spotted the pucker, you froze, turned, and scrambled back down to safety. You found another place to pass the afternoon."

Clark is an impatient man. Not impatient in the sense of someone who hates to wait, but impatient in the sense of someone who suspects there is something hugely important he should be doing. Unlike most people to whom that adjective is attached, Clark does not necessarily shed nervous energy. When he speaks, he drawls. His impatience is a metaphysical event. He needs change the way other people need sleep. Clark attributes this impulse to outside forces—the desire to prove himself to those who have humiliated him, a hankering for money, a craving for achievement. Yet, as Lewis follows Clark across oceans and into boardrooms, chronicling his amazing amassment of treasure, it becomes clear that he is propelled by more inchoate energies. In one scene, Lewis watches Clark struggle to fill out a questionnaire that requires him to state his occupation. "There was no name for what he did," Lewis writes. "For that matter, there is no name for what he is looking for." Lewis settles for calling the objective of Clark's impatience the "new, new thing."

The "new, new thing" is the bomb that explodes reality as it is conventionally perceived. For Lewis, Clark is the guy who "sits with the detonator between his legs." Instead of gunpowder, Clark ignites ideas—not necessarily new or complicated concepts, but notions that somehow pack the cognitive equivalent of Little Boy. Of course, more than a few are duds. And others are attached to a timing device, imperceptibly gathering power over months or years until they suddenly blow away cultural constructs like a tornado. For example, can anyone remember a time when we lived without the Internet?

Of all his accomplishments, Netscape Communications, founded by Clark and boy-wonder Marc Andreeson, is the most well-known. To learn about others, one has to dip into Silicon Valley lore. For example, the Geometry Engine © 1979—an advanced computer chip designed by Clark—led to the formation of his first company, Silicon Graphics, and to the technology used to make Jurassic Park. Clark conjured Healtheon, his third company, out of words arranged in a diamond on a piece of paper. They were: payers, doctors, consumers, and providers. With these four words, Clark figured he would take over the $1.5 trillion health care industry. Nearly four years later, Healtheon is a leading Internet health company with $48.8 million in annual revenue. Clark's vision of his own private banking empire, dubbed MyCFO, hasn't even launched yet but it has already lined up customers with a combined $20 billion in assets, and it seems likely to shake up the financial services world.

Nonetheless, what is truly amazing about Clark is not his knack for transforming ideas into wealth. It is his ability to transform himself from an unhappy boy born into the despair of America's underclass into a leading oracle of economic change. "I grew up in black and white," Clark tells Lewis. "I thought the whole world was shit, and I was sitting in the middle of it." Growing up in Plainview, Texas, Clark had an alcoholic dad who would drink by day and beat his mother by night. He dropped out of high school after a string of practical jokes—exploding a small bomb on the school bus, smuggling a skunk into a school dance, setting off firecrackers in a fellow student's locker—made him unwelcome there. In the Navy, Clark was steered onto a track for juvenile delinquents. Shipped out to sea, he recalls officers who called him stupid and bullies who tossed their plates on the floor just to watch him clean up the mess.

Clark's first transformation was from galley boy to mathematics star. That act of self-reinvention was followed by others, in seemingly endless succession, as Clark moved through the roles of college student and professor, business entrepreneur and technological seer. In Silicon Valley, Clark's ability to remake himself anew is now a given, one of the few things that can be counted on in the ever-shifting panorama of technical innovation. He has thus been anointed the status of chief explorer, leading engineers deeper and deeper into the digital frontier.

"I don't think Michael knew [that the book] was going to be about me until he started writing," Clark guesses. If so, Lewis was acting in the spirit of the age. Whether we realize it or not, we are all following adventurers like Clark. Just as the first Lewis and Clark team charted the Northwestern part of the United States, this modern-day reincarnation of that great American exploring duo maps the digital landscape we will soon inhabit. Read it and pack your gear. The adventure has only begun. ●

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Tidbits & Outrages

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The Case for Social Darwinism

The mother-in-law is appealing the decision

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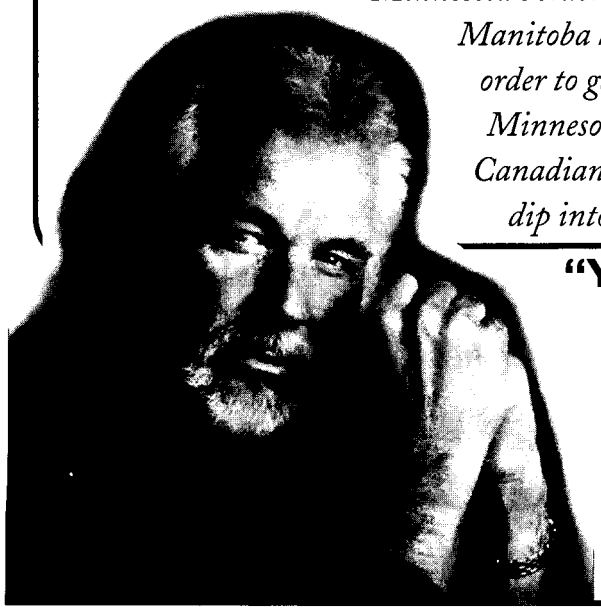
The United States and Canada recently squared off aggressively over a dispute about rights to the popular walleye fish that roam rivers and lakes near the Manitoba-Minnesota border. Minnesotans on a U.S. peninsula attached to Manitoba have threatened to secede and join Canada in order to get better access to walleyes, but in retaliation, Minnesota Gov. Jesse Ventura threatened to block the Canadian National railroad, whose track makes a short dip into Minnesota to get around one of the lakes.



"You Gotta Know When To Hold 'Em"

Republican incumbent Jim Blanq was declared the winner in a New Mexico judicial election after Democrat Lena Milligan lost a seven-card stud poker hand dealt in court by District Judge Neil Mertz.

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Political Booknotes

Chainsaw Massacre

By Robert Weissman

If the Al Dunlap of *Chainsaw* were a fictional character, he would be dismissed as a figment of bad writing, a one-dimensional caricature. He capitalizes on his notoriety for mass layoffs by writing a book called *Mean Business*. He seems to revel in firing people. He is fond of telling visitors, "I just love predators. They can't just call up room service when they are hungry. They must go out and hunt and kill to survive." An egomaniac, he screams at and purposefully humiliates his employees, including top management. He has a personal life to match: He cut himself off from his family, abused his first wife, and was stunningly stingy in child support payments to a son from his first marriage.

CHAINSAW:
The Notorious Career of Al Dunlap in the Era of Profit at Any Price
by John Byrne
New York: Harper Business, $26.00

Naturally, when Wall Street met this character in real life, it rejoiced. Dunlap broke through in his position as CEO of Scott Paper. After his corporate restructuring (11,000 people and 35 percent of the workforce fired) he was able to sell the company to Kimberly-Clark. Scott shareholders saw their investment rise by 225 percent.

That Kimberly-Clark stumbled badly after buying Scott did not register. When Sunbeam tapped Dunlap to run the company, Wall Street responded with hosannas. Share price rose a record 60 percent the day after the announcement of his hiring and continued to skyrocket during the first months of his tenure.

Dunlap quickly began to deliver the goods. He followed advice from his slash-and-burn consultants at Coopers & Lybrand to cut the headquarters staff from 308 to 124. Before that target was achieved, Dunlap decreed further cuts.

"I only want 100 people in the headquarters," Dunlap told two top surviving executives.

"Al," one asked, "how did you come to this conclusion?"

"Look," Dunlap retorted, "we could do this the hard way or the easy way. We are going to have only 100 people."

"I figured that we either did it or I would have to resign," one of the executives later told *Chainsaw* author John Byrne. "So we ended up firing people who were trying to get things done."

Dunlap certainly did not limit himself to firing middle management. He soon announced plans to sell or close 18 of Sunbeam's 26 factories. Wall Street celebrated, and the company's share value continued to climb.

Byrne does an excellent job of chronicling the human torment resulting from these plant closures, where experienced and efficient lifetime employees of Sunbeam were suddenly thrown onto the unemployment rolls. He also shows that many of the closure decisions were completely irrational from a business point of view. Profitable facilities were shut down and the costs incurred from production shifts could not be recouped in the foreseeable future. But Dunlap was determined to impress Wall Street with record jobs cuts, and he refused to listen to cautionary warnings.

These were not the only foolhardy element of Dunlap's restructuring. His plan was to cut costs, register short-term gains in profitability, and find a buyer for Sunbeam within a year. He succeeded at cutting costs, but not at finding a buyer. When his year was up, the consequences of his cost-cutting for the company's medium-to-long-term health quickly became apparent. Production snafus were commonplace. Buyers were overstocked with inventory, because Sunbeam sellers had inflated sales by offering deep discounts. Product quality slipped.

As profitability plummeted and the company fell into the red, the board of directors turned on Dunlap and fired him. Soon it became clear that earlier evidence of increasing profitability had been the result of accounting tricks that auditors retrospectively disallowed.

Byrne's rendition of Dunlap's year-and-a-half tantrum is remarkable, enriched by interviews with most of the top players in the drama, save Dunlap himself and one longtime Dunlap associate.

What is most disturbing about the tale, perhaps, is how many accomplices Dunlap had as he wreaked havoc on a venerable company and the lives of thousands of employees. Executive after executive echoes the one who told Byrne, "I was a greedy son of a bitch along with everyone else" and willing to do whatever Dunlap demanded in exchange for the promise of a big payoff in stock options. The auditors were bullied into going along with questionable accounting measures. And Wall Street analysts, the board of directors and the principal shareholders allowed themselves to be deluded by Dunlap's sham turnaround of the company.

Robert Weissman *is editor of the Washington, DC-based* Multinational Monitor.

The Case for Monarchy

By Nelson W. Polsby

Readers may remember the book *Our Crowd*, by Stephen Birmingham, published about 30 years ago, a pleasantly gossipy chronicle of New York City's interlocking families of German-Jewish merchant bankers who arrived on the scene in the middle of the 19th century. These dignified worthies pur-

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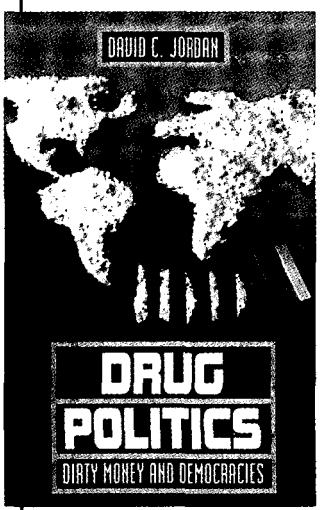
sued a distinctively Teutonic haute-bourgeois way of life, made lots of money, collected art, struggled with anti-Semitism (their own, as well as other people's), built enormous houses on and around Park Avenue, intermarried, and practiced civic virtue over several generations. *The Trust*, by Susan E. Tifft and Alex S. Jones, could be regarded as Volume II. Their crowd consists of the German-Jewish Ochs-Sulzberger dynasty that has owned *The New York Times* since 1896, whose lifestyle, high-mindedness, industriousness, and other social habits conform faithfully to the *Our Crowd* template.

What justifies the heroic length (896 pages) of this book is the fact that it is mostly about the stewardship of a newspaper, always an object of fascination to the journalistic enterprises that print or broadcast book reviews. As it happens, many books have been written at least in part about the *Times*, and so some of the stories Tifft and Jones retell here can be found in easily accessible works by, among others, Max Frankel, Gay Talese, Turner Catledge, and Sanford Unger. Two other books, by Elmer Davis and Meyer Berger, have given authorized institutional histories of the *Times* as of 1921 and 1951, respectively. This work, while drawing on *Times* archival sources, and numerous interviews, was not authorized, and includes a fair amount of material about such matters as personal animosities among the cast of characters, marital infidelities, and so on, the sort of thing authorized accounts usually omit.

There seems, in the sources I have consulted, to be broad consensus on such matters as the more or less perpetual disharmony between the *Times'* Washington bureau and national editors in New York; the reluctance by management until recently to let reporters use the name "Abraham" in their bylines; the smaller internal difficulty in publishing The Pentagon Papers than occurred at *The Washington Post* (owing I suppose, to the lesser risk to the *Times'* corporate interests); the tendency for diffident and courteous family members, who are always in charge, to surround themselves with authoritarian despots in

Drugs & Foreign Policy



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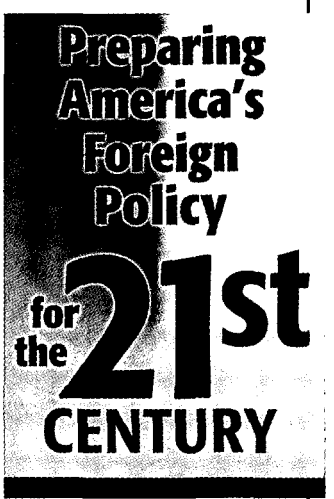

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top management jobs. These and other observations are smoothly blended into a chronological account that brings the story of the management of the *Times* up to the current team of Arthur O. Sulzberger Jr. and Joseph Lelyveld, with muted speculation about the line of future succession to the editor's chair. Readers will get best value out of the recent stuff, since many of the other books on the *Times* (mostly written by *Times* journalists) cover the older anecdotes quite well. But these accounts are not too interested in the business side of the paper. Therefore, unlike Tifft and Jones, they do not report, and probably do not care very much, why Walter Mattson beat out James Goodale for the presidency of the company or how flamboyant eccentrics (as portrayed here) like Lance Primis and Amory Bradford survived at the top of the company for as long as they did.

THE TRUST:
The Private and Powerful Family Behind The New York Times
by Susan E. Tifft and Alex S. Jones
Little, Brown, $29.95

There is one overarching argument faintly discernable amid the well-crafted narrative, and this is a somewhat unsystematic but unmistakable brief for monarchy as the preferred form of governance for a daily newspaper. In passing, comparisons are drawn between the happy succession of devoted sons-in-law and sons, now four generations away from Adolph Ochs, at the *Times* and what happened when outside management was allowed to supplant the Chandlers in Los Angeles, or when Bingham family squabbling forced the sale of the *Louisville Courier-Journal.*

This argument assumes that monarchy (or hereditary single-family proprietorship) is the only practical alternative to highly bureaucratized public ownership and that only monarchical owners can voluntarily decide to invest in the product rather than send income to the bottom line. Professional management, responsive to stockholders, is more likely to squeeze quality out of the newspaper in the interests of quarterly earnings.

I believe the jury is still out on the larger proposition. Tifft and Jones indicate that *Times* leadership is far from oblivious to considerations of profit in its management of its other journalistic properties. Some excellent and successful newspapers (say, *The Wall Street Journal* or the *Financial Times*) are run like conventional businesses rather than royal courts, and at least one, the *Milwaukee Journal*, is employee owned. Some newspaper-owning families (e. g. Cowles, Graham, McClatchy) have track records Tifft and Jones would no doubt approve of; some (e. g. Hearst, Murdoch, Loeb) may not.

My surmise, not contradicted by Tifft and Jones, is that one reason the *Times* is an unusual journalistic achievement is because its market niche has long been interpreted by its owners as to deliver the highest quality product as a way of assembling America's largest elite audience, increasingly located all over the nation. Those *Times* company properties that do not target that market (e. g. the Chattanooga, Tennessee newspaper where Adolph Ochs began his career as a newspaper man) get much less favored treatment. This does not seem to me very different from *Knight-Ridder's* differential treatment of its newspapers in San Jose and the East Bay.

So what, precisely, is held in trust that gives this book its title? As a first approximation I think a commitment to do what it takes to stay influential in the affairs of the nation. Nothing wrong with that. But it is a formulation that does not require quite so much piety as Tifft and Jones, with their copious accounts of dinner party toasts, anniversary celebrations, and miscellaneous tributes, seem to think appropriate.

NELSON W. POLSBY *is Heller Professor of Political Science at the University of California, Berkeley.*

Two Worlds

By John Harwood

SINCE MOST VOTERS ARE FEELing prosperous right now, the presidential candidates are indulging in a lot of talk about helping the disadvantaged. Bill Bradley is the most voluble of all. He wants to make helping poor children "the North Star of our society."

If he makes it to the White House, Bradley could start by making every member of his administration read *Code of the Street*, Elijah Anderson's wrenching and riveting road-map of life in inner-city Philadelphia. There they'll meet, in ways no campaign visit could ever reveal, the cross-pressured teenagers, embattled parents, and world-weary elderly residents who face a dangerous daily struggle to juggle the values of the larger society with the requirements of life in a community where some neighbors share those values and others reject them altogether. Through extensive interviews, some transcribed at length to let subjects speak in their own voices, Anderson peels back many layers of the onion here. He has produced an important advance on the work of Nicholas Lemann in *The Promised Land* and William Julius Wilson in *The Truly Disadvantaged* in helping illuminate what remains the greatest challenge facing American society.

Anderson is a University of Pennsylvania sociologist whose earlier work has explored the sexual mores of inner-city youth. Here he considers the role of violence in everyday life, with results both inspiring and heartbreaking. Inspiring, because of the resilience and determination demonstrated by parents and children who try to hew to the standards of "decent families" while resisting the magnetic pull of a "street" culture that mocks and threatens their aspirations. Heartbreaking, because that attraction is often powerful enough to upend that balance and sink their dreams.

The story of a 15-year-old named Tyree shows how the simplest daily errand can turn into a minefield. One Saturday, his grandmother sends him to the store for bread and milk. On the way over, in a neighborhood he has just moved into, he encounters the teenage "bols" who run the neighborhood. They "roll on" the unfamiliar intruder, knocking him to the ground. Momentarily frightened but not seriously hurt, Tyree feels impelled to

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respond. He heads home to clean up (without the groceries, of course), then returns and punches out one of the "bols" in a process Anderson calls "campaigning for respect." Later he's obliged to participate in a full-scale brawl.

"This is the code of the street," Anderson writes. "It is as old as the world, going back to Roman times, or the world of the Shogun warriors or the early American Old South." What's different is the level of disconnection from mainstream values, the ready accessibility of guns, and the low threshold for using violence to set and enforce the code.

CODE OF THE STREET
by Elijah Anderson
W.W. Norton & Company, $29.95

The distinction between those with "decent" and those with "street" values is often lost on outsiders at schools, shops, and workplaces; sometimes residents blur the distinction themselves to cope with neighbors or outsiders seen as hostile forces, including the police. The result strengthens the grip of what Anderson calls an "oppositional culture" that inhibits the ability of anyone to break free in the education system or the work force.

Anderson devotes long passages to community archetypes pushing back against these forces. One is the black grandmother, a dominant presence in the extended family from the time of slavery. Her role ebbed early in this century as the industrial economy provided middle-class incomes to rising numbers of black men; now it's resurgent in the inner cities, where male breadwinners are a dwindling presence since so many middle class families have departed. "But she is now apt to feel tired and demoralized," Anderson writes, by the prevalence of crack, unemployment, and social disintegration.

Anderson also describes the "decent Daddy," who must compete with hoods and drug dealers to set community standards, and faces serious physical risks by regulating the conduct and associations of his children. Yet fewer and fewer young men attempt to assume the role, and those who do often don't succeed. The number of "old heads" to set an example is also shrinking. With each successive generation, the community's supply of social capital is drawn down.

It's no surprise, in research of this type, that Anderson becomes personally involved in the lives of some subjects. John Turner is an intelligent, athletic 21-year-old when the author meets him. He lives with his mother and two siblings, and has fathered four children by three different mothers. Mr. Turner had gotten into trouble by venturing into unfamiliar territory to visit a girlfriend. When she complained that neighborhood youths were bothering her, he came over and brought a gun, which he tossed away when he saw police in the street. He thought he was simply helping his girlfriend, and responded honestly when police asked him about the gun. He was arrested for illegal possession of a firearm, fined, and placed on probation by a judge who labeled him a criminal.

That sets off a long spiral of events from which Turner is unable or unwilling to extricate himself. He lands a well-paying job, but dissipates it on girlfriends and becomes lax about his probationary obligations, alienating his probation officer. He goes to jail and loses his job. He lands another, well-paying one and falls behind on payment of his fine. Impressed by Turner's ambition, Anderson connects him with a lawyer and helps him land a union job with good wages and benefits by vouching for him to a union steward at a local hospital. But the job doesn't work out—John feels humiliated by the older, "decent" men on the job—and he lands in jail once again for missing fine payments. In the end, as he confesses to an exasperated Anderson, he turns to drug dealing.

The author closes the book with a happier story. Rob, a former drug dealer, joins a few friends in deciding to turn their lives around with help and advice from an "old head" who helped them open a fruit stand. Their quest to stake out a spot and conduct business is a success, but a tenuous one.

Still, tales like Turner's leave the

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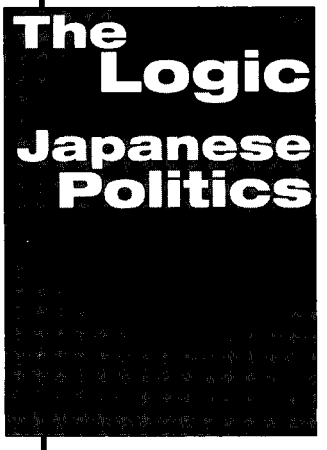

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reader skeptical when Anderson points to economic remedies as the top priority for those working on inner-city problems. "Above all," he says, what's needed "is the development of jobs that pay a living wage." But John Turner had such a job, more than once; he simply proved unable to transcend the vicious cycle that, as we see from Anderson's brilliant description, the code of the street imposes. "What has formed," he says, "is a kind of institutionalized oppositional culture" that makes participation in mainstream institutions "problematic if not impossible for many."

It's hard to know what innovation of public policy or private charity can shatter this dispiriting equation. In recent years some students of the so-called "underclass" have suggested that the best way to handle their problems is to essentially break up the inner-city neighborhoods they live in. Public housing policy has already shifted in that direction, eschewing concentrated developments in favor of a "scattered site" approach mixing low-income families with working and middle-class residents.

What will our next president have to say about all this? Republican candidates, to greater or lesser degrees, promote private school vouchers to rescue inner-city children. Texas Gov. George W. Bush wants a tax cut tilted toward those "on the edge of poverty." Among Democrats, Al Gore and Bill Bradley want to expand access to health care and improved public education.

All that, and a booming economy, would help. Lately there are signs that the benefits of the seven-year boom are beginning to lift those at the lower reaches of the income distribution, increasing opportunity and diminishing inequality. Anderson gives us plenty of reason to be pessimistic that those advances will be adequate to overcome the problems of today's most troubled inner-city neighborhoods. But he deserves enormous credit for having made plain just how daunting that task is.

JOHN HARWOOD *is a political editor at* The Wall Street Journal.

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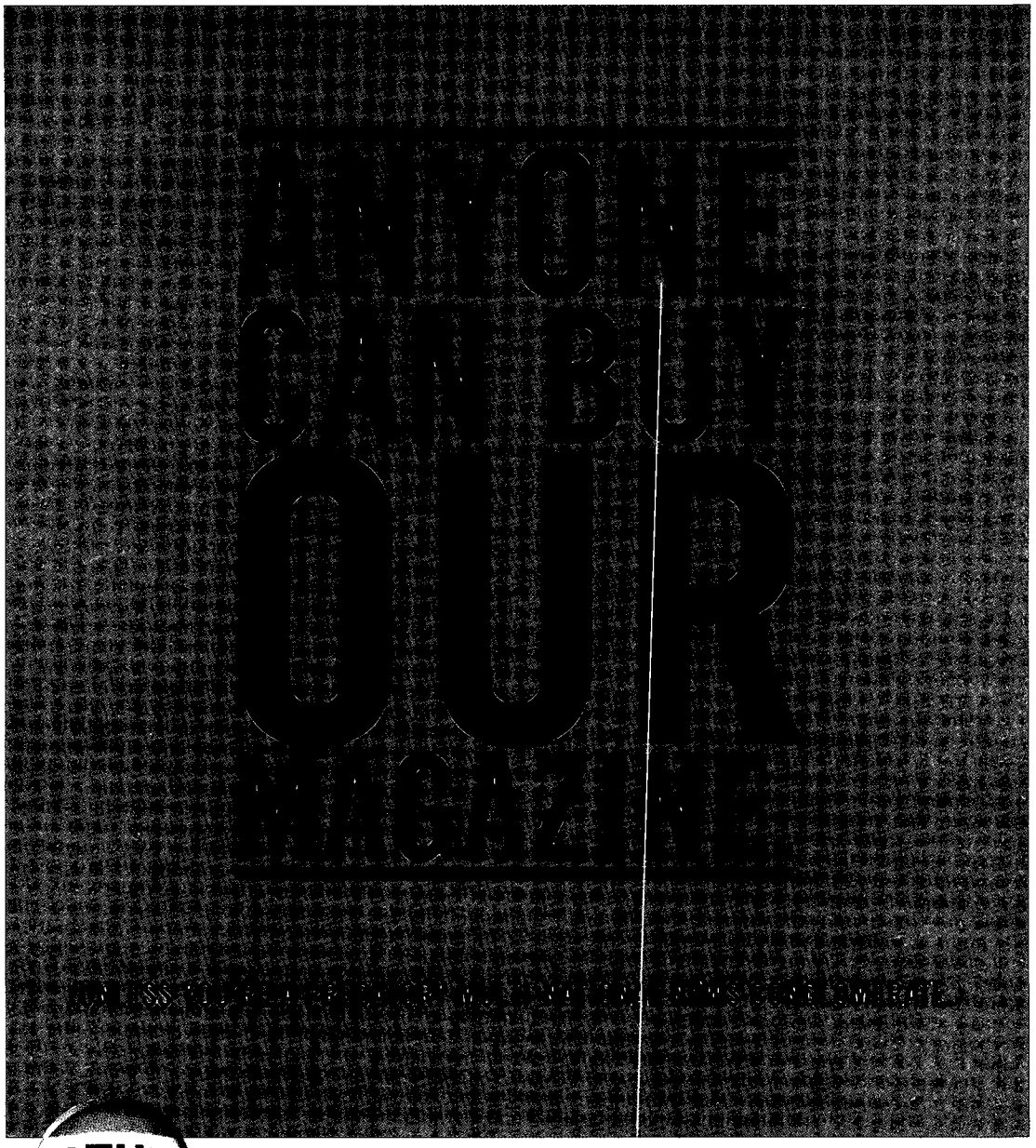

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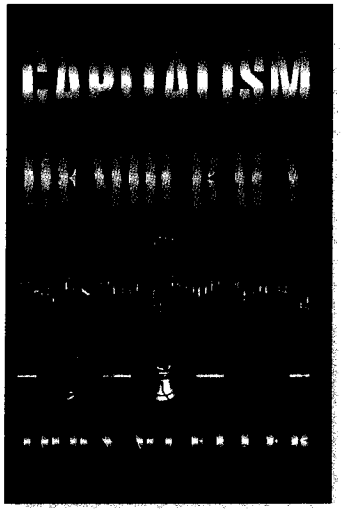

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John Mueller

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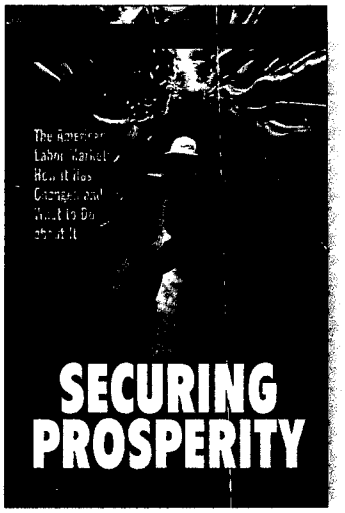

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Paul Osterman

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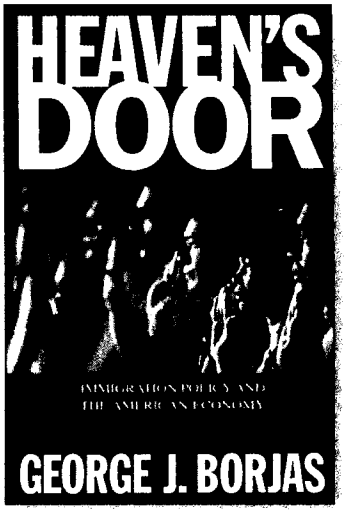

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